SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2009

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

2009 GENERAL ASSEMBLY
2009 REGULAR SESSION

2009

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
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To the Members of the 2009 Session of the 2009 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import from the 2009 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 in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

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

This document is the result of a combined effort by the following staff members of the Research Division: Dee Atkinson, Cindy Avrette, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Judy Collier, Bill Gilkeson, Kory Goldsmith, Trina Griffin, Tim Hovis, Jeff Hudson, Shirley Iorio, Sara Kamprath, Brad Krehely, Mariah Matheson, Theresa Matula, Kara McCraw, Jennifer McGinnis, Joe Moore, Jennifer Mundt, Kelly Quick, Shawn Parker, William Patterson, Hal Pell, Giles S. Perry, Wendy Graf Ray, Barbara Riley, Steve Rose, and Susan Sitze. Dan Ettefagh, of the Bill Drafting Division, and Martha Walston, of the Fiscal Research Division, also contributed to this document. Brenda Carter is chief editor of this year's publication, and Heather Fennell is co-editor. Ben Popkin, Denise Huntley Adams, Susan Barham and Lucy Anders, of the Research Division, also helped edit this document. The specific staff members contributing to each subject area are listed directly below the chapter heading for that area. Staff members' initials appear after their names and after each summary they contributed. If you would like further information regarding any legislation in the various summaries, please contact the Research Division Office at (919) 733-2578.

This document 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,

O. Walker Reagan
Director of Research

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TABLE OF CONTENTS

Chapter 1
Agriculture and Wildlife

Heather Fennell (HF), Mariah Matheson (MM), Hal Pell (HP),
Barbara Riley (BR), Steve Rose (SR), Susan Sitze (SS)

Enacted Legislation

Agriculture

Adopt Official North Carolina Potato Festival

S.L. 2009-24 (HB 588) designates the Albemarle Potato Festival as the official Irish Potato Festival of the State of North Carolina.

This act became effective May 13, 2009. (HF)

Clarify License Requirements/Out-of-State Weighmasters

S.L. 2009-87 (HB 1108). See **Occupational Boards and Licensing.SB 405**

Update North Carolina Meat Inspection Act

S.L. 2009-102 (HB 1104) makes the inspection fees for ostriches and other ratites the same as for other meat inspections, removes domesticated rabbits from regulation under the Poultry Products Inspection Act, and makes changes to the exemption provisions applicable to poultry processors in intrastate commerce.

The act conforms State law with federal law, as it relates to ratite meat inspections, by deleting the inspection fee requirement for establishments preparing ostriches and other ratites as a meat food product. A "ratite" is a flightless bird such as an ostrich, umu, or rhea. The act does not change inspection requirements, but does provide that the inspections are now subject only to overtime fees, as is the case with other meat inspections.

The act amends the State's Poultry Products Inspection Act to conform with federal law concerning the processing of rabbits as meat products to be sold in interstate commerce. The act repeals G.S. 106-549.51A, which required facilities slaughtering rabbits to have an inspector onsite at the time of slaughter. Rabbit processing plants are subject to FDA regulations, which require periodic site inspections for sanitation purposes. The act also amends the law concerning the inspection of poultry, by providing certain exemptions from requirements related to the inspection of poultry when distribution is limited to intrastate commerce only. A poultry producer who raises and slaughters not more than 20,000 chickens or 5,000 turkeys, and who does not sell the poultry in interstate commerce, is subject only to basic sanitation requirements and periodic inspections; an inspector is not required to be onsite at the time of slaughter.

This act became effective June 15, 2009. (HP)

Extend State Veterinarian's Animal Disease Authority

S.L. 2009-103 (HB 1083) removes the sunset on provisions in State law authorizing the State Veterinarian, in consultation with the Commissioner of Agriculture and with approval of the Governor, to implement emergency measures in the event of an imminent threat within the State of a potentially serious and rapidly spreading contagious animal disease.

Authorized emergency measures include: restrictions on the transportation of potentially infected animals, agricultural products, and other commodities into and out of potentially infected areas; restrictions on access to such areas; quarantines; use of emergency disinfectant; destruction of infected animals; and other control measures at portals of entry to the State.

The original legislation, S.L. 2002-12, was subject to a sunset provision as of April 2003. The sunset was extended in 2003 and again in 2005. The last authorization expired on October 1, 2009.

This act became effective September 30, 2009. (MM)

North Carolina Farmland Preservation Trust Fund

S.L. 2009-303 (HB 684) amends the membership of the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee by deleting the provision designating the Director of the Southeast Regional Office of the American Farmland Trust and substituting the Executive Director of the Rural Advancement Foundation International or the Executive Director's designee. The membership change was necessitated by the closure of the American Farmland Trust's Southeast Regional Office.

The legislation also clarifies that the monies in the Agricultural Development and Farmland Preservation Trust Fund may be used only for the purposes set forth in G.S. 106-744(c), which include the purchase of agricultural conservation easements, the costs of public and private programs that will promote profitable and sustainable family farms through assistance to farmers, funding conservation easements to bring into or maintain farmland in active production, and program administrative costs.

This act became effective July 17, 2009. The change in membership of the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee must occur prior to the next quarterly meeting of the Committee occurring on or after that date. (BR)

Recover Pets/Relieve Overcrowding at Shelters

S.L. 2009-304 (SB 467) amends public health laws providing for the impoundment of animals found not wearing rabies tags, and expands the definition of Animal Control Officer. This act:

- Provides that animal control officers may use a microchip scanning device to scan animals to determine if there is a chip with identifying information, if the scan can be done without cost, or at a reasonable cost.
- Requires that rules adopted by the Department of Agriculture and Consumer Services be followed in euthanizing animals. If there are no applicable rules, procedures approved by one of three specified organizations must be used (American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.)
- Requires that before an animal is sold or euthanized, it must be made available to the public for inspection and adoption, unless the animal is not adoptable due to injury or defects due to health or temperament. If an animal is seriously ill or injured, it may be euthanized if the manager of the shelter determines, in writing, that it is appropriate to do so.
- Requires that animal shelters be open at least three days per week, for four hours each day, to persons seeking to find lost animals. Those attempting to find an animal are entitled to view every animal at the shelter. [Note: As to these requirements, the effective date of the act, January 1, 2010, may be postponed by the Department of Agriculture until July 1, 2010, for counties that do not have an employee who fills the position of animal control officer for a minimum of 30 hours per week.]

- Provides that dogs and cats held for reasons other than rabies control are subject to the 72-hour holding period, as are animals surrendered by the animal's owner—unless the owner provides proof of ownership and agrees in writing to a waiver of the prescribed holding period before disposition.
- Provides that when animals without identifying information are delivered to shelters by a person who found and captured the animal or by an approved rescue organization that received the animal from a person who found and captured the animal, such person or organization may be appointed by the animal shelter as its agent. The agency is terminable at will by the agency. The animal shelter, absent a contract, is immune from liability to the owner for any harm to the animal, and is not liable for any costs for care of the animal while it is with the agent. The finder or rescue organization must hold the animal for the prescribed period. After the prescribed period, the animal shelter may transfer by adoption the animal to the finder or rescue organization, or extend the holding period time.
- Provides that during the prescribed holding period, the animal may be placed by the animal shelter into foster care. If a dog or cat leaves the animal shelter premises (put with an agent or on foster care), then a photograph of the animal must be displayed at the animal shelter during the prescribed holding period. It must be displayed in a conspicuous location that is open to the general public for the entire prescribed holding period.
- Expands the definition of "animal control officer" to include those agents of private organizations operating animal shelters under contract with a city or county, during the time that those agents are performing animal control functions at the shelter.

Except as noted above, this act became effective January 1, 2010. (HP)

Board of Agriculture Review of Fee Schedules

S.L. 2009-451, Sec. 11.3 (SB 202, Sec. 11.3) requires the Board of Agriculture to review all fees under its jurisdiction every odd-numbered year to determine whether any of the fees should be changed, and to report its findings to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division.

This section became effective July 1, 2009. (SR)

Update Seed Law / Increase Seed License Fees

S.L. 2009-455 (HB 1103) makes several changes to the North Carolina Seed Law. The bill:

- Amends G.S. 106-277 to delete regulation of "screenings". Screenings are seed, inert matter, and other materials removed from seeds by cleaning or processing.
- Amends the definitions section by replacing the term "processing" with the term "conditioning", meaning the cleaning, scarifying, or blending to obtain uniform quality or other operations that would change the seed such that retesting is required to determine the quality of the seed.
- Amends the labeling statute by changing the lot identification requirement to "lot number."
- Changes the label requirements for vegetable seeds.
- Amends G.S. 106-277.9, regarding prohibited acts related to seeds. It changes the time frames in which the germination tests must be conducted on different types of seeds. Germination tests on agricultural seed must be completed within a nine-month period immediately prior to sale or offering for sale. Germination tests on cool season lawn seeds or mixtures of such seeds must be completed within a 15-month period and vegetable seed within a 12-month period. The changes also

delete the requirement for public hearing to designate a longer time period and eliminate the treatment requirements for pepper seed.
- Amends G.S. 106-277.28 to increase the license fees for various categories of seed dealers.

This act became effective October 1, 2009. (BR)

Sustainable Local Food Policy Council/Goal

S.L. 2009-530 (SB 1067) creates the 24-member North Carolina Sustainable Local Food Policy Council whose purpose is to contribute to building a local food economy to create jobs, stimulate economic development, circulate money within local communities, and provide greater food security for North Carolinians. The Council will also consider and develop policies regarding (1) health and wellness; (2) hunger and food access; (3) economic development; and (4) preservation of farmlands and water resources.

In developing sustainable local food policies for the State the Council is authorized to conduct in-depth analyses/assessments of:

- The foods served to public school students under the National School Lunch Program and the School Breakfast Program, including the possibility of increasing the amount of sustainable local food used in these programs.
- The possibility of making sustainable local food available under public assistance programs, including the potential use of food stamps at local farmers markets.
- The possibility of promoting urban gardens and backyard gardens for the purpose of improving the health of citizens, making use of idle urban property, and lowering food costs for urban dwellers during times of economic hardship.
- The potential impacts that the production of sustainable local food would have on economic development in the State.

The council also may consider:

- Issues regarding how local and regional efforts could promote a sustainable local food economy.
- Issues regarding the identification and development of solutions to regulatory and policy barriers to developing a strong sustainable local food economy.
- Issues regarding strengthening local infrastructure and entrepreneurial efforts related to a sustainable local food economy.

The Council must report its findings and recommendations to the General Assembly, the Governor, and the Commissioner no later than October 1 each year, the first report being due no later than October 1, 2010.

This act became effective August 28, 2009, and will expire on July 31, 2012. (BR)

Wildlife

Clarify Interstate Wildlife Violator Compact

S.L. 2009-15 (HB 105) clarifies that the Interstate Wildlife Violator Compact includes violations of marine resources law. The Compact, adopted in 2008, provides a means through which party states may participate in a reciprocal program to promote compliance with statutes and regulations relating to wildlife resource management.

The act clarifies that the term "wildlife" includes all species of animals protected or regulated by the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries in the Department of Environment and Natural Resources. The act authorizes the Secretary of Environment and Natural Resources and the Division of Marine Fisheries, in addition to the Wildlife Resources Commission, to suspend or revoke the hunting and fishing

license, privilege, or right of any person whose license, privilege, or right has been suspended or revoked by another Compact party state.

This act became effective October 1, 2009. (SS)

Active Duty Hunting/Fishing License Exemption

S.L. 2009-25 (HB 97). See **Military, Veterans', and Indian Affairs**.

Standardize Wild Boar Seasons/Swine Study

S.L. 2009-89 (HB 1118) standardizes wild boar hunting season and the harvesting of feral swine, and directs the Department of Agriculture and Consumer Services (Department) to study issues related to the importation of feral swine in North Carolina as follows:

- Repeals several local acts related to hunting wild boar that currently apply only to Burke, Caldwell, Jackson, and Mitchell counties, making the rules regarding hunting of wild boar consistent across the State.
- Defines wild boar as "free-ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission".
- Directs the Department, in consultation with the Wildlife Resources Commission, the U.S. Department of Agriculture's Animal and Plant Health Inspection Services, and a cross-section of interested agricultural organizations, to study issues related to the importation of feral swine in North Carolina, including the associated risks and potential economic impact of importation. The act directs the Department to report its findings and recommendations to the House Agriculture Committee and the Senate Agriculture, Environment, and Natural Resources Committee during the 2010 Regular Session of the 2009 General Assembly.

The repeal and definition provisions became effective October 1, 2009. The remainder of this act became effective July 1, 2009. (MM)

Amend Trap Sizes

S.L. 2009-120 (SB 1011) amends the laws governing the size of traps for taking wild animals. State law provides that an animal may not be taken by trapping with any steel-jaw, leg hold, or conibear trap unless the trap:

- Has a jaw spread of not more than seven and one-half inches.
- Is horizontally offset with closed jaw spread of at least three-sixteenths of an inch for a trap with a jaw spread of more than five-and-one-half inches. This subdivision does not apply if the trap is set in the water with quick-drown type of set.
- Is smooth-edged and without teeth or spikes.
- Has a weather-resistant permanent tag attached legibly giving the trapper's name and address.

A conibear trap is a body hold trap and may be set in the water only near areas where beaver and otter may be lawfully trapped. The act deletes the reference to the trap number (330) and provides for the use only of conibear-type traps that have an inside jaw spread or opening (width or height) greater than seven-and-one-half inches and that are no larger than 26 inches in width, and 12 inches in height.

This act became effective October 1, 2009. (HP)

Antlerless Deer Tag Fee

S.L. 2009-214 (SB 1008) authorizes the Wildlife Resources Commission to issue a "Bonus Antlerless Deer License" for a fee of $10. This license may be issued to valid holders of big game

hunting licenses and individuals exempt from the licensing requirements, including landholders and individuals under 16 accompanied by a licensed adult. Individuals would be able to take two additional antlerless deer, increasing the total deer per season to the following:

- In the Eastern Deer Season, of the eight total deer, individuals may take no more than four antlered deer per season.
- In the Central, Northwestern, and Western Deer Seasons, of the eight total deer, individuals may take no more than two antlered deer per season.

This act became effective July 1, 2009. (HF)

Bat Protection Act

S.L. 2009-219 (HB 1419) authorizes the Wildlife Resources Commission to develop a bat eviction and exclusion curriculum that may be taught by trade associations or wildlife conservation organizations for certification. The curriculum may incorporate the training that is provided as part of Wildlife Damage Control Agent certification in best management practices for removing and evicting bats from structures and in preventing bats from reentering structures.

This act became effective June 30, 2009. (SS)

Migratory Game Bird Season Authority

S.L. 2009-221 (SB 1010) authorizes the Wildlife Resources Commission (WRC) to issue:

- Proclamations to set seasons, shooting hours, bag limits, and possession limits congruent with the season framework set by the U.S. Department of the Interior. This authority may be delegated to the Executive Director of the WRC.
- Proclamations to allow the use of electronic calls or unplugged shotguns in order to achieve substantial conformity with applicable federal law and rules.

Proclamations authorized under the act must state the hour and date they become effective and be issued at least 48 hours in advance. Additionally, the Executive Director must make reasonable efforts to give notice of the terms of any proclamation to those affected by it, including press releases, posting of notices where persons affected may gather (such as boating ramps), and other measures. Proclamations remain in force until rescinded using the same method established for enactment.

This act became effective July 1, 2009. (MM)

Hunting License Exemption for Special Events

S.L. 2009-248 (SB 1009) expands the Wildlife Resource Commission's current rulemaking authority to exempt individuals from certain hunting and fishing license requirements when participating in organized events. Exempted individuals must comply with reporting requirements of the Commission, federal requirements for waterfowl hunting, and all other requirements of license holders. Exempt individuals also must comply with hunting safety requirements or be accompanied by a licensed adult who supervises the individual.

This act became effective October 1, 2009. (HF)

Require Boating Safety Education

S.L. 2009-282 (SB 43) requires persons under the age of 26 to comply with boating safety education in order to operate a vessel with a motor of 10 horsepower or greater.

Compliance with boating safety education may be obtained by:

- Completing and passing a boating safety course given by the Wildlife Resources Commission, or approved by the National Association of State Boating Law Administrators and accepted by the Wildlife Resources Commission.

- Passing a proctored equivalency examination.
- Possessing a valid or expired Coast Guard license.
- Possessing a State-approved, nonrenewable temporary operator's certificate to operate a vessel for 90 days, issued with the certificate or number to the purchaser of a boat.
- Possessing a rental/lease agreement from a boat rental business listing the person as the authorized operator of the boat.
- Properly displaying dealer registration numbers during demonstration of the boat.
- Operating the vessel under the direct supervision of a person 18 years of age or older who complies with the requirements of the statute.
- Showing that the operator is not a resident, is temporarily in the State and boating for a period of 90 days or less, and meets the boating safety education requirements of his or her home state.
- Being a registered commercial fisherman or under the direct supervision of a registered commercial fisherman while operating the commercial fisherman's boat.

Any person who has assumed operation of the vessel due to the illness or physical impairment of the initial operator does not have to comply with these requirements in order to return the vessel to shore to provide assistance or care for the operator.

Any person who violates the provisions of this act, or a rule adopted pursuant to this act, is guilty of an infraction, as provided in G.S. 14-3.1. A person may not be convicted of violating this section if, when tried for the offense, the person produces in court a certification card or proof that the person has completed and passed a boating safety course in compliance with the provisions of this act. The act prohibits local governments from enacting ordinances or rules relating to boating safety education, and preempts all existing ordinances or rules.

The act provides that operators of personal watercraft remain subject to the provisions of G.S. 75A-13.3, and amends that statute to require that persons between the ages of 14 to 16 on a personal watercraft must be in compliance with the boating safety education requirements or be accompanied by a person who is in compliance.

Additionally, the act requires any vessel livery to provide the operator of a leased personal watercraft with basic safety instruction prior to allowing operation of the leased personal watercraft. A vessel livery that fails to provide basic safety instruction is guilty of a Class 3 misdemeanor.

This act becomes effective May 1, 2010. (SS)

Studies

Legislative Research Commission

Greenhouse Gas Credits for Farming

S.L. 2009-574, Sec. 2.38 (HB 945, Sec. 2.38) authorizes the Legislative Research Commission to study the feasibility and advisability of extending credits to the business of farming in the same manner that credits are extended to other businesses in the event that North Carolina participates in a market-based "Cap-and-Trade" program for greenhouse gas emissions.

This section became effective September 10, 2009. (BR)

Equine Industry

S.L. 2009-574, Sec. 2.55 (HB 945, Sec. 2.55) authorizes the Legislative Research Commission to study and evaluate the recommendations contained in the report to the Joint

Legislative Commission on Governmental Operations resulting from the Equine Industry Study conducted by the Rural Economic Development Center, Inc.

This section became effective September 10, 2009. (BR)

Impact and Control of Fire Ants in North Carolina

S.L. 2009-574, Sec. 2.56 (HB 945, Sec. 2.56) authorizes the Legislative Research Commission to study issues relating to the impact, control, and eradication of fire ants in North Carolina.

This section became effective September 10, 2009. (BR)

Coyote Nuisance Removal Program

S.L. 2009-574, Sec. 2.57 (HB 945, Sec. 2.57) authorizes the Legislative Research Commission to study the development of a coyote nuisance removal program aimed at diminishing the threat presented by the existence of a coyote population in the State.

This section became effective September 10, 2009. (BR)

Spay/Neuter Program

S.L. 2009-574, Sec. 2.59 (HB 945, Sec. 2.59) authorizes the Legislative Research Commission to study the possibility of establishing a voluntary statewide program to foster the spaying and neutering of dogs and cats to reduce the population of unwanted animals in the State.

This section became effective September 10, 2009. (BR)

Poultry Worker Health and Safety

S.L. 2009-574, Sec. 2.61 (HB 945, Sec. 2.61) authorizes the Legislative Research Commission to study ways to improve poultry worker health and safety.

This section became effective September 10, 2009. (BR)

Referrals to Departments, Agencies, Etc.

Department of Agriculture to Study Whether the Current Regulation of the Land Application of Septage and Sludge Adequately Protects Human Health and the Environment

S.L. 2009-574, Sec. 39.1 (HB 945, Sec. 39.1) authorizes the Department of Agriculture and Consumer Services to study:

- The extent to which septage and sewage sludge is being spread or applied to land in the State.
- Whether current regulation of septage or sludge spreading is adequate.
- Whether changes are needed so that the combined effects of the land application of animal wastes and municipal wastes are not detrimental to the people, domestic animals, or wildlife of the State or the land and waters of the State.

The Department is authorized to work with local Soil and Water Conservation Districts to determine the total volume of septage and sludge being spread in a county and post maps regarding the findings on NC OneMap. Information may be shared with the commissioners of each county. The Department also may consider whether the pesticide program administered by

the Department should be expanded to regulate the transportation and application of all wastes that may include waste that would be considered hazardous if it were not commingled with domestic sewage and determine what fees would be necessary to establish a regulatory program, including testing of sludge and septage. The Department also may work with the University of North Carolina to identify cost effective alternatives to land application. The Department may report its findings and recommendations to the General Assembly no later than May 1, 2010.

This section became effective September 10, 2009. (BR)

Chapter 2
Alcoholic Beverage Control

Brenda Carter (BC), Susan Sitze (SS), Kelly Quick (KQ)

Enacted Legislation

Local Government Objections to Alcoholic Beverage Control Stores

S.L. 2009-36 (HB 186) prohibits a local Alcoholic Beverage Control (ABC) board from establishing an ABC store at a particular location within a municipality if the governing body of the municipality has passed a resolution objecting to the location of the proposed store and the resolution is based upon information and evidence presented to the governing body of the municipality at a public hearing. If a municipality objects to a location, the local ABC board may request the ABC Commission to approve the proposed ABC store location notwithstanding the objection of the municipality. The ABC Commission has the final authority to determine if the proposed location is suitable for an ABC store.

This act became effective October 1, 2009, and applies to ABC store locations announced on or after that date. (BC)

Alcoholic Beverage Control Recycling Stay Extension

S.L. 2009-105 (HB 759) allows an applicant for the issuance or renewal of an on-premises Alcoholic Beverage Control (ABC) permit to apply to the ABC Commission for a one-year stay of the mandatory recycling requirement, if the applicant is not able to find a recycler for its beverage containers. The applicant must detail efforts made to comply with the recycling requirement, and specify any impediments to the implementation of a recycling plan. If the application is certified by the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources, the applicant will not be required to comply with the recycling requirement during the one-year period for which certification is granted.

This act became effective June 15, 2009, and applies retroactively to applications for permits and for renewal of permits submitted to the ABC Commission on or after January 1, 2009. (BC)

Alcoholic Beverage Control Rules/Private Clubs

S.L. 2009-381 (HB 1228) amends the law regarding the authority of the Alcoholic Beverage Control (ABC) Commission to adopt rules concerning private clubs, by deleting the specific grant of authority to adopt a rule requiring that a private club have a waiting period for membership. The act requires the ABC Commission to keep a record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs and to report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee prior to the convening of the 2011 Regular Session of the General Assembly.

This act became effective July 31, 2009. (BC)

Malt Beverage Special Permit

S.L. 2009-377 (HB 1595) authorizes the Alcoholic Beverage Control (ABC) Commission to issue a malt beverage tasting permit that allows malt beverage tastings at grocery stores and other food businesses, and specifies conditions for the malt beverage tastings. A malt beverage tasting is defined as the offering of a sample of one or more malt beverage products, without charge and in amounts of no more than two ounces for each sample, to customers of the business.

The act also authorizes the issuance of a malt beverage special event permit to the holder of a brewery permit, malt beverage importer permit, or nonresident malt beverage vendor permit, allowing the permittee to give free samples and to sell its products at trade shows, conventions, shopping malls, various festivals and other similar events approved by the ABC Commission. The permit is valid only in jurisdictions that have approved the sale of malt beverages.

This act became effective October 1, 2009. (BC)

2009 Viticulture/Enology Act

S.L. 2009-539 (HB 667) creates an exemption from the Alcoholic Beverage Control laws for accredited community colleges, colleges, and universities for the purpose of conducting research in connection with teaching or extension programs.

The act amends the law concerning the issuance of an off-premises unfortified wine permit, to allow a school that holds a viticulture/enology authorization to obtain an off-premises unfortified wine permit and sell wines manufactured as part of its program. The wines may be sold at one non-campus location in a county where the permittee offers classes on a regular basis in a facility owned by the permittee. The act also authorizes the issuance of the permit to a winery or wine producer to sell its own unfortified wine during hours when the winery or wine producer is open to the public, subject to any local ordinance that might apply. The permit also would allow a winery to sell its wine at one additional location in the county under the same conditions specified for the sale of wine at the winery.

The act amends the definition of a "sports club" to include an establishment that provides equine boarding, training, and coaching, and that also offers on-site dining, lodging, and meeting facilities and hosts horse trials and other events sanctioned by the United States Equestrian Federation, Inc. Sports clubs may obtain on and off-premises permits, including mixed beverages, without approval at an election. An exception applies in certain localities that have voted against the sale of mixed beverages.

This act became effective August 28, 2009. (BC)

Chapter 3
Children and Families

Drupti Chauhan (DC), Shirley Iorio (SI), Susan Sitze (SS), and Wendy Graf Ray (WGR)

Enacted Legislation

Establish Domestic Violence Fatality Review Team / Mecklenburg County

S.L. 2009-52 (SB 381) authorizes Mecklenburg County to establish a multidisciplinary Domestic Violence Fatality Prevention and Protection Review Team. The Team's purpose is to identify and review domestic violence-related deaths, and facilitate communication among the various agencies and organizations involved in domestic violence cases, with the goal of preventing future fatalities. The act defines what would be considered a domestic violence fatality, and lists the designated positions for membership on the Review Team, which would be lead by Community Support Services of Charlotte.

The Review Team must issue an interim report to the local board of county commissioners, the North Carolina Domestic Violence Commission, and the Governor's Crime Commission, summarizing its findings and activities, by June 15, 2011. A final report with recommendations is due by June 15, 2014.

This act became effective June 1, 2009. (SS)

Study Existing Children / Youth Programs

S.L. 2009-126 (HB 659) requires the Joint Legislative Program Evaluation Oversight Committee to include in the Program Evaluation Division's 2009-2010 Work Plan a study of existing programs that directly or indirectly benefit children and youth in North Carolina. The study must include (i) identification of the programs and their sources of funding, and (ii) determination of whether the programs have clear goals, indicators, or benchmarks by which to measure the programs' success.

The Program Evaluation Division must submit its findings and any recommendations to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

This act became effective June 19, 2009. (SI)

Clarify Consecutive Terms - Aging & Child Commissions

S.L. 2009-142, Sec. 2 (HB 358, Sec. 2) clarifies the number of consecutive terms that a member of the Legislative Study Commission on Children and Youth may serve by specifying that members may be appointed to a maximum of three consecutive terms.

This section became effective June 19, 2009. (WGR)

Amend Adoption Laws

S.L. 2009-185 (HB 1106) amends and clarifies various statutory provisions pertaining to adoption.

The act amends the law governing adoption preplacement assessments and reports to the court to:

- Provide that a preplacement assessment prepared in another state that does not meet all of the requirements of this State may be updated by a person or entity authorized to gather the necessary information pursuant to the laws of the state where the prospective adoptive parents reside.
- Provide that an order for a report to the court may be sent to a person or entity authorized under the laws of the petitioner's state of residence to prepare home assessments for adoption proceedings.
- Clarify that if the petitioner moves to a different state before the agency completes the report, the agency must request a report pursuant to the Interstate Compact on the Placement of Children from a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's new state of residence.

The act also makes the following changes with regard to adoptions:

- Amends the law governing who may file a petition for adoption to clarify that it applies to minor children, and to provide that a man and a women who jointly readopt a minor child in a foreign country while married to each other must readopt jointly in this State, regardless of whether they have since divorced. If either does not join in the petition to readopt, he or she must be joined as a necessary party.
- Amends the law governing notice of adoption proceedings to provide that issuance of a summons is not required to commence an adoption proceeding.
- Amends the law governing reports that must be made to the court to assist the court in determining whether the proposed adoption is in the minor's best interests. In any adoption of a minor by the minor's grandparent, in which the minor has lived with the grandparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report. The court is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or the minor is eligible for adoption assistance payments.
- Clarifies the law governing the seven-day period for revocation of consent for adoption to provide that if the final day of the revocation period falls on a Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day.
- Amends the law concerning revocation of relinquishment of a child to clarify that a relinquishment is executed by the infant or minor's parent or guardian. If the final day of the seven-day period when a relinquishment may be revoked falls on a Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the period when a relinquishment may be revoked extends to the next business day.

This act became effective June 18, 2009. (DC)

Child Care Facilities Rules

S.L. 2009-187 (HB 1046). See **Health and Human Services**.

Clarify Action for Divorce / Incompetent Spouse

S.L. 2009-224 (HB 1091) allows any of the following to commence, defend, maintain, arbitrate, mediate, or settle any action authorized by Chapter 50 of the General Statutes (Divorce and Alimony) on behalf of an incompetent spouse:

- A duly appointed attorney-in-fact who has the power to sue and defend civil actions on behalf of the incompetent spouse and who has been appointed pursuant to a durable power of attorney under Chapter 32A (Powers of Attorney) of the General Statutes.

- A guardian appointed in accordance with Chapter 35A of the General Statutes (Incompetency and Guardianship).
- A guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b) of the Rules of Civil Procedure.

The act clarifies that only a competent spouse can commence an action for absolute divorce.

This act became effective June 30, 2009. (DC)

Amend Birth Registration Requirements

S.L. 2009-285 (HB 1112) amends the law governing birth registration to allow a child's putative father to be entered on the birth certificate under certain circumstances. Generally, if a mother is married at the time of either conception or birth, or between conception and birth, the name of the mother's husband must be entered on the birth certificate as the father. An exception is made, however, if a court has determined paternity in someone other than the mother's husband. In this case, the name of the father, as determined by the court, will be entered on the birth certificate.

This act creates a new exception to the requirement that the husband's name be entered on the birth certificate. The act provides that the name of the putative father will be entered on the birth certificate if the mother, mother's husband, and putative father complete an affidavit acknowledging paternity that contains all of the following:

- A sworn statement by the mother consenting to and declaring that the putative father is the child's natural father.
- A sworn statement by the putative father declaring that he believes he is the natural father.
- A sworn statement by the husband consenting to the assertion of paternity by the putative father.
- Information explaining the effect of signing the affidavit, including a statement of parental rights and responsibilities and acknowledging receipt of the information.
- The social security numbers of all of the parties.
- The results of a DNA test that has confirmed the paternity of the putative father.

The act also requires an unmarried mother to include in an affidavit acknowledging the paternity of the father a statement that she was unmarried at all times from conception through birth.

This act became effective July 10, 2009, and applies to birth certificates of children born on or after that date. (WGR)

Virtual Visitation/Family Law

S.L. 2009-314 (HB 1299) amends the laws pertaining to custody of a minor child by authorizing the court to provide for visitation rights by electronic communication. Electronic communication is defined as contact other than face-to-face contact, facilitated by electronic means including telephone, e-mail, instant messaging, video teleconferencing, wired or wireless Internet technologies, or other mediums. In granting this type of visitation, the court must consider the following:

- Whether electronic communication is in the best interest of the child.
- Whether the necessary equipment is available and affordable to the parents of the child.
- Any other appropriate factors.

The act authorizes the court to set guidelines, including hours in which the communication is made, allocation of costs between the parents, and the furnishing of access information between the parents. The communication may be subject to supervision as ordered

by the court. Electronic communication may be used to supplement regular visitation, but may not be used as a replacement for custody or visitation, or to justify relocation by a custodial parent out of the area. Electronic communication also cannot be a factor in calculating child support.

This act became effective July 17, 2009. (WGR)

Increase Child Support Collections

S.L. 2009-335 (SB 817) provides that a person who commits criminal contempt by failing to comply with an order to pay child support is subject to censure, imprisonment up to 30 days, a fine of not more than $500.00, or any combination thereof.

The act also provides that a sentence of imprisonment for up to 120 days may be imposed for a single act of criminal contempt resulting from the failure to pay child support. However, the sentence would be suspended upon conditions reasonably related to the contemnor's payment of child support.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (DC)

Joint Domestic Violence Committee/Recommendations

S.L. 2009-342 (HB 115) makes the following changes to the laws related to domestic violence:

- Revises the membership and staffing of the North Carolina Domestic Violence Commission.
- Provides the procedure for a summons relating to a domestic violence protective order. This procedure is now identical to that currently required to obtain a civil no-contact order.
- Clarifies the procedure for a summons relating to a civil no-contact order. Only a single summons is issued.
- Clarifies that the term "valid protective order" includes, for the purposes of enforcement of orders, an emergency or ex parte order.
- Provides that a sentence is enhanced if a person commits an offense while under a protective order, and clarifies that an emergency or ex parte order is a valid protective order for the purposes of this section.

The Administrative Office of the Courts, in consultation with the Governor's Crime Commission and the North Carolina Attorney General's Office, must determine the financial and operational impact of developing an automated statewide domestic violence protective order notification system and report their findings to the Joint Legislative Committee on Domestic Violence and the Fiscal Research Division of the General Assembly by February 1, 2010.

In addition, the North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence and the North Carolina Coalition Against Sexual Assault must study the issue of State oversight and coordination of services to victims of sexual violence and whether sexual violence should be included as a focus area of the Commission. The Commission must report its findings and recommendations to the Joint Legislative Committee on Domestic Violence by February 1, 2010.

The provisions of this act pertaining to the procedure for a summons relating to a domestic violence protective order or a civil no-contact order became effective for actions or motions filed on or after December 1, 2009. The remainder of the act became effective July 24, 2009. (SI)

Clarify Domestic Violence Laws/Arrest/Valid Protective Order

S.L. 2009-389 (HB 1464) clarifies that despite the holding of the North Carolina Court of Appeals in *Cockerham-Ellerbee v. The Town of Jonesville* (176 N.C. App. 372, 626 S.E.2d 685 (2006)), the intent of the General Assembly is that G.S. 50B-4.1(b) creates a mandatory provision requiring a law enforcement officer to arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe the person has knowingly violated a domestic violence protective order. The act also clarifies that the arrest may occur with a warrant, as well as without a warrant.

This act became effective July 31, 2009. (SS)

Clarify/Alienation of Affection/Criminal Conversation

S.L. 2009-400 (HB 1110). See **Civil Law and Procedure** and **Criminal Law and Procedure**.

Amend Purpose/Child Placing/Child Care Laws

S.L. 2009-408 (SB 969) amends the policy statement for North Carolina laws governing child placing and child care, and directs the Division of Social Services of the Department of Health and Human Services to revise its rules to reflect the revised policy statement. The Department of Health and Human Services is the agency responsible for investigating and licensing persons who provide foster care for children or receive and place children in residential group care, family foster homes, or adoptive homes. The statutes include a statement that it is the policy of the State to strengthen and preserve the family as a unit, and that when a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family. This act amends the policy statement to note the high priority of protecting children's welfare, and to note that residential care facilities can satisfy the standard of protecting a child's welfare, regardless of the child's age, particularly when sibling groups can be kept intact.

This act became effective August 5, 2009. (WGR)

Strengthen Domestic Violence Protective Orders/Pets

S.L. 2009-425 (SB 1062) authorizes a court issuing a domestic violence protective order to:

- Provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or by a minor child residing in the household.
- Direct a party to refrain from the cruel treatment or abuse of an animal owned, possessed, kept, or held as a pet by either party or by a minor child residing in the household.

This act became effective August 5, 2009. (SS)

Increase Marriage License Fee

S.L. 2009-451, Sec. 20A.4 (SB 202, Sec. 20A.4) increases the fee for a marriage license from $50 to $60. Prior to this increase, $20 of the marriage license fee went into the Domestic Violence Center Fund. With the increase, now $30 of the fee goes to the Fund. The Fund is used to make grants to centers for victims of domestic violence and to The North Carolina Coalition Against Domestic Violence.

This section became effective September 1, 2009, and applies to licenses issued on or after that date. (WGR)

North Carolina Partnership for Children, Inc., to Conduct Audits of Local Partnerships

S.L. 2009-451, Sec. 20C.1 (SB 202, Sec. 20C.1) provides that local partnerships are subject to audit and review as contracted for by the North Carolina Partnership. Prior to this act, audits and reviews were conducted by the State Auditor. The North Carolina Partnership must provide the State Auditor with copies of the audits.

This section became effective July 1, 2009. (WGR)

Chapter 4
Civil Law and Procedure

Brad Krehely (BK), Erika Churchill (EC), Tim Hovis (TH)

Enacted Legislation

No Elected Official Recommendations/Certain Counties/ Notaries

S.L. 2009-227 (SB 268) removes for certain counties the requirement that applicants to become notaries public have the recommendation of an elected public official. Notary applicants do not have to obtain the recommendation if the county has more than 5,250 active notaries public (was 15,000). According to the Secretary of State's Office, as of January 1, 2009, the following counties have more than 5,250 active notaries public – Wake (15,651), Mecklenburg (14,089), Guilford (7,256), and Forsyth (5,288).

This act became effective June 30, 2009. (BK)

File Lis Pendens for Certain Erosion Actions

S.L. 2009-269 (SB 586) permits the filing of a notice of lis pendens for an action seeking injunctive relief regarding sedimentation and erosion control for any land disturbing activity subject to the Sedimentation Pollution Control Act of 1973. For these purposes, "land disturbing activity" is defined as "any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation." A notice of lis pendens is a notice filed for the purpose of warning all persons that the title to certain property is in litigation and a purchaser is in danger of being bound by an adverse judgment. Currently, in North Carolina, a notice of lis pendens also may be filed in the following actions:

- Actions affecting title to real property.
- Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property.
- Actions in which any order of attachment is issued and real property is attached.

This act became effective October 1, 2009. (EC)

Rewrite Foreign Money Judgments Laws

S.L. 2009-325 (SB 285) rewrites the law concerning the recognition of foreign money judgments, as recommended by the General Statutes Commission. It requires state courts to recognize foreign-country judgments to the extent that the judgment (1) grants or denies recovery of a sum of money and (2) is final, conclusive, and enforceable under the law of the foreign country rendering judgment. The act does not apply to a foreign-country judgment for any of the following:

- Taxes.
- A fine or other penalty.
- Alimony, support, or maintenance in matrimonial or family matters.

It creates definitions for "foreign country" and "foreign-country judgment" and clarifies that the law does not apply to recognition of sister-state judgments. The act sets forth the procedure for recognition and nonrecognition of a judgment. It provides that if a judgment is

recognized under the procedure, then to the extent the foreign country judgment grants or denies the recovery of money, a recognized judgment is (1) conclusive between the parties to the same extent the judgment of a sister state is entitled to full faith and credit and (2) enforceable in the same manner and to the same extent as a judgment rendered in this State. The act sets a statute of limitations for an action to recognize the judgment at 10 years from the date the foreign-country judgment became effective in the foreign country.

This act became effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign country judgment is raised. (BK)

Certain Notarial Acts Validated

S.L. 2009-358 (HB 559) validates any acknowledgement and any instrument notarized by a person who failed to take the oath as a notary public again after recommissioning. It provides that the acknowledgement and instrument have the same legal effect as if the person qualified as a notary public at the time the person performed the act. The act applies to notarial acts performed on or after May 15, 2004, and before July 8, 2009.

This act became effective July 27, 2009. (BK)

Clarify / Alienation of Affection / Criminal Conversation

S.L. 2009-400 (HB 1110) amends two common law causes of action in tort. A common law cause of action for alienation of affection is recognized in North Carolina. The action is comprised of wrongful acts which deprive a married person of the affections of his or her spouse, including love, society, companionship, and comfort. To sustain a common law cause of action for alienation of affection, a plaintiff must show all of the following:

- That the plaintiff and the plaintiff's spouse were happily married and that a genuine love and affection existed between them.
- That the love and affection so existing was alienated and destroyed.
- That the wrongful and malicious acts of the defendant produced and brought about the loss and alienation of such love and affection.

A common law action for criminal conversation also is recognized in North Carolina. Criminal conversation is synonymous with adultery. To sustain a cause of action for criminal conversation, a plaintiff must show all of the following:

- The actual marriage between the spouses.
- Sexual intercourse between defendant and plaintiff's spouse during coverture.

The act provides the following with respect to the torts of alienation of affection and criminal conversation:

- The claim cannot arise from acts of a person that occur after the plaintiff and plaintiff's spouse physically separate with the intent that the separation be permanent.
- The action cannot be commenced more than three years from the last act of the defendant giving rise to the cause of action.
- The cause of action may be commenced only against a natural person.

This act became effective October 1, 2009. (EC)

Statute of Repose / Products Liability

S.L. 2009-420 (SB 882) addresses statutes of repose and statutes of limitations in products liability actions. A statute of repose is a statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury. A statute of limitations is a law that bars claims after a specified period, specifically a statute establishing a time limit for

suing in a civil case based on the date when the claim accrued (such as when the injury occurred or was discovered).

Prior to the act, in North Carolina, the statute of repose for products liability prohibited actions for recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product brought more than six years after the date of initial purchase for use or consumption. The act repeals the prior law and creates a new 12-year statute of repose for products liability (no recovery if the action is brought more than 12 years after the date of initial purchase for use or consumption).

This act became effective October 1, 2009. (EC)

Qui Tam / Liability for False Claims

S.L. 2009-554, Sec. 1 (HB 1135, Sec. 1) adds a new Article to allow the recovery of treble damages and impose civil penalties for obtaining money by submitting or assisting in the submission of false or fraudulent claims to the State. In addition to an action brought by the Attorney General, the act also authorizes a private person, known as a qui tam plaintiff, to file an action on behalf of the State and to share in the proceeds of the action under certain circumstances.

The federal Deficit Reduction Act of 2005 (DRA) allows states certified by the Inspector General as enacting a false claims act as effective as the federal False Claims Act to retain an additional 10% of the federal share of Medicaid recoveries. S.L. 2009-554 has been submitted by the North Carolina Attorney General's Office to the Inspector General for this certification.

The act includes the following provisions:

- Creates a civil remedy against persons who knowingly cause or conspire to cause the payment or approval for payment of a false or fraudulent claim by the State. Violators are liable for treble damages, plus the costs of both the action and the Attorney General's investigation, and a civil penalty of not less than $5,000 or more than $11,000 for each violation.
- Authorizes a private person to bring a civil action in the name of the State and of the individual who is known as the qui tam plaintiff. The complaint must be served on the Attorney General who may elect to intervene in the case. The complaint is kept under seal for 120 days and may not be served on the defendant until the court orders that it be served. The Attorney General also has an independent duty to investigate potential violations and may bring an action under the section.
- Authorizes the State to limit the participation of a qui tam plaintiff, if the State proceeds with the action. If the action is successful, the qui tam plaintiff may receive at least 15%, but not more than 25%, of the proceeds of the action, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. If the action was based primarily on disclosures of specific information from specified sources (civil or criminal hearings, governmental reports or hearings, or the news media) other than the qui tam plaintiff, the qui tam plaintiff can receive no more than 10% of the proceeds. If the State does not proceed with the action, and the action is successful, the plaintiff may be awarded between 25% and 30% of the proceeds. If the qui tam plaintiff proceeds with an action and it is unsuccessful, the defendant may be awarded attorneys' fees and expenses if the court finds that the case was frivolous or that the plaintiff's purpose was harassment.
- Bars certain actions, including those based on public disclosure of information in a criminal, civil, or administrative hearing, or a legislative, General Accounting Office, or State Auditor report or investigation, or the news media, unless the action is brought by the Attorney General or by the person who was the "original source" of the information.

- Authorizes the Attorney General to issue civil investigative demands for the production of documents or other objects relevant to an investigation.
- Establishes the procedure for false claim actions.
- Requires the Attorney General to report annually on qui tam cases to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety.

Section 1 became effective January 1, 2010, and applies to acts committed on or after that date. A civil action may be filed after January 1, 2010, based on acts committed prior to that date if the activity also would be covered under statutes dealing with Medicaid fraud.

Sections 2 and 3 of the act make changes to the law governing Medicaid fraud. For additional information on these sections, see **Health and Human Services.** (TH)

Major Pending Legislation

Uniform Apportionment of Tort Responsibility

HB 813 would enact the Uniform Apportionment of Tort Responsibility Act. The bill would override the common law doctrine of contributory negligence currently applicable in the State in favor of comparative negligence. The doctrine of contributory negligence prevents a plaintiff from recovering anything in a tort action if the plaintiff's own negligence contributed to his or her injuries. Comparative negligence evaluates the relative degree of fault attributed to both the defendant and the plaintiff in a negligence suit and reduces or apportions the damages to be borne by all the parties, including the claimant, accordingly. North Carolina is one of only five jurisdictions that retain the doctrine of contributory negligence.

Under "pure" comparative negligence, liability is apportioned among all parties found to be responsible for causing the damages giving rise to the action, including the claimant, according to the percentage of responsibility assigned to each. Under the "modified" comparative negligence approach taken by HB 813, recovery is barred if the total responsibility assigned to the claimant is 50% or more of the total. Otherwise, the recovery is reduced by the percentage of responsibility assigned to the claimant.

Except for specific circumstances, the bill also would replace the current rule of "joint and several" liability with the concept of "several" liability. The rule of "joint and several" liability currently enforced in the State provides that, where multiple defendants are liable for damages, the plaintiff may recover the entire judgment from any one of the defendants or from any and all of the defendants in various amounts. "Several" liability, as referenced in the bill, means a defendant may be liable with other defendants, but his or her liability is limited to the amount for which he or she is deemed responsible and is not pro rata.

HB 813 passed the House of Representatives and is pending in the Senate Judiciary I Committee. (TH)

Chapter 5
Commercial Law and Consumer Protection

Drupti Chauhan (DC), Karen Cochrane-Brown (KCB), Heather Fennell (HF), Brad Krehely (BK), Tim Hovis (TH), Jeff Hudson (JH), William Patterson (WP)

Enacted Legislation

Continuing Crossbow Permit / Dealers and Manufacturers

S.L. 2009-6 (SB 5) provides that a permit for the purchase or receipt of crossbows is deemed to be a continuing permit with no expiration date if the permit is issued to a corporation that is a manufacturer, wholesale dealer, or retail dealer of crossbows. The permit, which must contain an identification number, applies to all subsequent purchases or receipts of crossbows by the corporation. The holder of a continuing permit may receive crossbow deliveries in the course of business without displaying the permit to the person delivering the crossbows.

The act relieves manufacturers of crossbows from the obligation of keeping records of its sales. Wholesale dealers of crossbows are also exempt from keeping records of sales to other wholesale dealers or to retail dealers of crossbows. Retail dealers of crossbows are still required to keep records of sales.

This act became effective March 19, 2009. (DC)

Amend Banking Laws

S.L. 2009-28 (SB 668) amends the Banking Law to allow State chartered banks participating in the Capital Purchase Program to declare and pay dividends on preferred shares issued to the U.S. Treasury in connection with the Program. As part of the federal Troubled Asset Relief Program (TARP), the U.S. Treasury established a voluntary Capital Purchase Program to encourage financial institutions to build capital in order to increase the flow of financing to businesses and consumers.

In addition, with the prior approval of the Commissioner of Banks, a bank may issue and pay dividends on preferred shares in order to recapitalize itself.

This act became effective May 20, 2009. (KCB)

Banking Commission Appeals

S.L. 2009-57 (SB 669) amends the general provisions governing appeals to the Banking Commission. The act clarifies that the notice of appeal must state the grounds for the appeal and set forth in numbered order the assignments of error for review. Failure to state the grounds as well as failure to comply with the Commission's briefing schedule is a basis for dismissal of the appeal. Once the Commission makes a final decision, a party may petition for judicial review to Wake County Superior Court in accordance with Article 4 of Chapter 150B of the General Statutes. The act makes it clear that a party may appeal a decision of the Commissioner to the Banking Commission and may petition for judicial review of a final decision of the Commission.

The act also conforms other laws under the jurisdiction of the Banking Commission to the appeals provisions set forth in Section 1 of the act.

This act became effective June 5, 2009. (KCB)

Modernize Do Not Call Notice Procedures

S.L. 2009-122 (HB 686) authorizes local telephone companies to use bill messages, direct mail, or e-mail (when affirmatively selected by the customer), in addition to bill inserts, to provide the required notification to their residential telephone subscribers of the opportunity to object to receiving telephone solicitations through the federal "Do Not Call' registry and other State law provisions. The act also requires the Attorney General, in consultation with the staff of the Public Utilities Commission, to draft the contents of the bill inserts, bill messages, direct mail, and e-mail messages authorized to be used in making the required notifications.

This act became effective October 1, 2009. (DC)

Amend Law Governing Business Trusts

S.L. 2009-174 (HB 615) makes the following changes to the law governing business trusts:

- Amends the statutory definition of "business trust" to specifically include Illinois land trusts and Delaware statutory trusts.
- Repeals the requirement that an instrument conveying real property held by the business trust be attested or countersigned and sealed.
- Provides that the memorandum of the declaration of trust required to be filed in the county in which the land is located may contain a designation of trustees and authorized officers and their authority in real property matters.
- Provides that the conveyance of certain interests in real property by an officer of the business trust is authorized if the conveyance has an attached resolution of the Board of Trustees authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments.
- Provides that a signed resolution is not required in the case of an instrument signed by a trustee, president, vice president, or assistant vice president.
- Provides that as long as there is nothing in the trust agreement or provision in the memorandum or declaration of trust providing otherwise, if the instrument registered at the register of deeds office appears on its face to have been signed in the ordinary course of business by a trustee, president, vice president, or assistant vice president on behalf of the business trust, the instrument is valid with respect to the rights of innocent third parties for value.
- Provides that the power of a representative of the business trust to bind the trust pursuant to express or implied authority or other means is not prohibited.
- Provides that a trustee or other officer of a business trust is not relieved from liability incurred through a violation of their actual authority.

This act became effective October 1, 2009, and applies to all instruments recorded on or after that date. (JH)

Amend Future Advances Statutes

S.L. 2009-197 (HB 1368) amends the future advances statutes to distinguish between a future advance and a future obligation and makes various other changes. The act does all of the following:

- Defines an "advance" as "a disbursement of funds or other action that increases the outstanding principal balance owing on an obligation for the payment of money."
- Rewrites the statute which sets out the requirements for priority of a security instrument.

- Extends the period within which future advances may be made and future obligations incurred under a security instrument from 15 to 30 years beyond the date of the security instrument.
- Clarifies that further advances and additional obligations may be made under a security instrument within the specified time period and will be secured to the same extent as original advances and obligations under the security instrument. However, if at any time the outstanding principal balance exceeds the maximum principal amount that may be secured by the security instrument at one time, the excess will not be secured by the security instrument.
- Provides a security instrument has the same priority to the extent of future obligations and future advances secured by it, as if the advances and obligations had been made or incurred at the time the instrument was registered (not the date it was executed).

This act became effective October 1, 2009, and applies to all security instruments, whether registered before, after, or on the effective date of this act. (BK)

No Deceptive Advertising/Business Location

S.L. 2009-199 (SB 625) amends G.S. 75-42, *Deceptive representation of geographical location in telephone directory, print advertisement, or on the Internet*, to provide that it is a misrepresentation if "any other part" of a telephone directory, directory assistance, Internet listing, or print advertisement for a supplier of perishable products incorrectly indicates that it is located in a geographical area when in fact it is not located in that area. As enacted in the 2007 Session, the statute applied only if the "name of the business" indicated that it was located in a geographical area and it was not.

This act became effective October 1, 2009. (TH)

Prevent the Theft of Scrap Metals

S.L. 2009-200 (HB 323) increases the requirements of secondary metals recyclers regarding regulated metal property. Recyclers must issue a receipt to individuals who deliver regulated metals for recycling. Receipts for catalytic converters and central air conditioner evaporator coils or condensers must bear the fingerprint of the individual who delivered the item for recycling. Law enforcement officers may request electronic transfer of secondary metals recycler receipts. Recyclers may not purchase catalytic converters not attached to vehicles and central air conditioner evaporator coils or condensers, except from companies that are in the business of replacing the items. Purchases for more than $100 must be paid by check or money order, and a photograph of the individual selling the items must be maintained by the recycler for 90 days.

The act also prohibits secondary metals recyclers from purchasing any of the following:

- Any metal with an identification mark or name of a utility, railroad company, brewer, or government entity.
- Utility access covers, street light poles, guard rails, street signs, water meter covers, traffic signals and signs, historical or grave markers, or metal beer kegs.

The prohibitions in this act do not apply to purchases of beverage containers, or of regulated metals or metals from an entity that generates or sells the regulated property in the ordinary course of business.

This act became effective October 1, 2009. (HF)

Self-Service Storage Facilities

S.L. 2009-201 (SB 448) amends the laws regulating liens on personal property in self-service storage facilities. The act does all of the following:

- Requires the owner of a self-storage facility to conduct an online search for Uniform Commercial Code filings with the Secretary of State in the name of the occupant. The purpose is to identify an existing security interest in the stored property.
- Authorizes the towing of a motor vehicle upon which a lien is claimed when the debt remains unpaid for 60 days. The lienor is not liable for any damages to the motor vehicle once the tower takes possession of the property.
- Changes the service of the notice requirement when a motor vehicle is not involved from registered or certified mail, return receipt requested, to regular first-class mail.
- Changes the start date of the ten-day period to contest from receipt by the occupant to the date of mailing.
- Authorizes the owner to terminate the tenancy of the occupant at the expiration of the ten-day period. The lienor also may move the occupant's property to another place of safekeeping.
- Modifies the publication requirement by eliminating the requirement that the notice be posted at the courthouse.
- Provides that the partial payment of rent or other charges will not satisfy the lien or delay the owner's right to sell the occupant's property unless the owner agrees in writing.
- Provides that unless the rental agreement provides otherwise, the care, custody, and control of the property stored at a self-service storage facility remains vested in the occupant until the property is sold.
- Provides that unless the rental agreement provides otherwise, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees.

This act became effective October 1, 2009. (BK)

Prohibit Sale of Novelty Lighters

S.L. 2009-230 (SB 652) prohibits the retail sale, offer to sell, or distribution for retail sale of novelty lighters. A novelty lighter is defined as a mechanical or electrical device typically used for lighting cigarettes, cigars, or pipes, that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes. The prohibition would not apply to transporting novelty lighters through the State or storing novelty lighters in a warehouse or distribution center in this State that is closed to the public for the purpose of retail sales.

The act excludes the following: (1) Lighters manufactured prior to January 1, 1980; (2) mechanical or electrical devices primarily used to ignite fuel for fireplaces, or charcoal or gas grills; and (3) standard disposable or refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves, but which do not otherwise resemble a novelty lighter.

A person who violates the prohibition commits an infraction and is subject to a penalty of $500 for each violation. The clear proceeds of any penalty would be remitted to the county school fund. A first offense during the first year the act is in force would not be subject to a penalty.

This act became effective October 1, 2009, and applies to infractions committed on or after that date. (TH)

Modify North Carolina Limited Liability Company Act

S.L. 2009-247 (SB 412) makes the following technical and clarifying changes to the North Carolina Limited Liability Company Act:

- Extends the authority to file documents with the Secretary of State's office which are related to limited liability companies (LLCs) to the directors and executives of an LLC.
- Creates two new methods for persons to be admitted as members of an LLC:
  - Designation or appointment as provided in the articles of organization or written operating agreement or by an assignee of the last member after the LLC ceases to have any members.
  - Admission in connection with a conversion or merger of a business entity into an LLC.
- Clarifies that for the purpose of determining when a distribution is restricted, those amounts paid as reasonable compensation are not included in the calculation.
- Provides that an assignee of an interest in an LLC may become a member by one of the following methods:
  - By meeting the requirements in the LLC's articles of organization or operating agreement.
  - By the unanimous consent of the members if the articles of organization or operating agreement do not provide otherwise.
  - Under the laws providing for the dissolution of the LLC if the LLC ceases to have members.
- Removes provisions that allowed for a personal representative or guardian of a member to have the authority to exercise all of the member's rights for the purpose of settling the estate or administering the member's property.
- Addresses the dissolution of the LLC when the LLC no longer has any members and allows persons designated or admitted as members by the assignee of the last member to become a member and thereby have the authority to manage the LLC.
- Clarifies that it is the intent of the General Assembly to give "maximum effect to the principle of freedom of contract and to the enforceability of operating agreements".

This act became effective January 1, 2010. (DC)

Internet Ticket Protection Resale Sunset

S.L. 2009-255 (HB 309) removes the June 30, 2009, sunset on S.L. 2008-158 which allowed admission tickets to be resold on the Internet at a price greater than the price printed on the face of the tickets.

This act became effective July 6, 2009. (DC)

Truth in Music Advertising Act

S.L. 2009-284 (SB 634) makes it unlawful for any person to advertise or conduct a live music performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless one or more of the following apply:

- The performing group is the authorized registrant and owner of a federal service mark for that group registered in the U.S. Patent and Trademark Office.
- At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name.
- The performance is identified in all advertising as a salute or tribute OR the performance is not so closely related as to confuse or mislead the public.

- The advertising does not relate to a live musical performance in this State.
- The performance is authorized expressly by the recording group.

A person who violates this act is liable for a civil penalty of not less than $5,000, but not more than $15,000 per violation. Each performance is a separate violation. The penalty and enforcement provisions are in addition to any other provisions for enforcement provided by law. A violation is also an unfair and deceptive trade practice under G.S. 75-1.1, which allows for treble damages in a private party action, and attorney fees if the defendant acted willfully.

This act became effective October 1, 2009. (HF)

Utilities/Collectors/Debt Collection

S.L. 2009-302 (HB 1330) prohibits a public utility, an electric membership corporation, a telephone membership corporation, and a city or county that operates a public enterprise from suspending or disconnecting service to an individual due to the debt of another person who resides with the customer, unless one or more of the following apply:

- The customer and the other person were members of the same household at a different location when the unpaid balance for service was incurred.
- The person was a member of the customer's current household at the time service was established, and the person had an unpaid balance for service at that time.
- The person seeks to have his or her name placed on the customer's account.

The act also prohibits a public utility, an electric membership corporation, a telephone membership corporation, and a city or county that operates a public enterprise from requiring a customer to assume the debt of another person who will reside in the customer's household in order to continue service, unless one of the following apply:

- The customer and the other person were members of the same household at a different location.
- The person was a member of the customer's current household at the time service was established.

A public utility, an electric membership corporation, a telephone membership corporation, and a city or county that operate a public enterprise are not prohibited from using any remedy to collect a debt if a customer misrepresents his or her identity to receive service.

This act became effective July 17, 2009. (HF)

Revise North Carolina Ski Safety Statutes

S.L. 2009-353 (HB 334) requires persons participating in winter sports (defined as the use of "skis, snowboards, snowshoes, or any other device for skiing, sliding, jumping, or traveling on snow or ice") to keep a proper lookout to avoid obvious hazards and inherent risks, to stay clear of pole lines and snowmaking equipment, to wear retention straps if on a snowboard, and, if using freestyle terrain, to know their abilities to negotiate the terrain and avoid conditions and obstacles beyond those limits that would have been revealed by a visible inspection of the terrain.

The act also requires ski area operators to inspect and record the condition of winter sports slopes, alpine and Nordic ski trails, and freestyle terrains that are open to the public, and to post the general surface conditions for the entire ski area twice daily.

A violation of these duties by the skiers or ski operators constitutes negligence if it proximately causes personal injury or property damage.

This act became effective October 1, 2009. (WP)

Enhance Protections Against Identity Theft

S.L. 2009-355 (SB 1017) enhances protections against identity theft. The act makes the following changes:

- Allows a consumer to request a security freeze on the consumer's credit report by first-class mail, telephone call, or electronically by use of a secure Web site or secure electronic mail connection.
- Requires that requests to place a security freeze be made effective within three business days if the request is made in writing, or within 24 hours if the request is made electronically or by phone. Except in specified circumstances, the act requires that requests to lift a security freeze for a specified period of time or to a specified party or to permanently lift a freeze be made effective within three business days if the request is made in writing, or within 15 minutes if the request is made electronically or by phone.
- Prohibits consumer reporting agencies from charging a fee in response to an electronic request to place, remove, or lift a freeze. A consumer reporting agency may charge a fee not to exceed $3 for placing a security freeze by telephone or mail, or for providing a second or subsequent personal identification number.
- Allows a parent or guardian of a minor to make inquiries concerning the existence of a credit report for the minor and requires the consumer reporting agency to make reasonable efforts to prevent providing a credit report on the minor.
- Requires that any business that possesses personal identifying information of North Carolina residents include in its notification to a person whose personal information is breached the applicable toll-free numbers and addresses for the major consumer reporting agencies, the Federal Trade Commission, and the North Carolina Attorney General's Office. The business also must notify the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, and other specified information.
- Permits registers of deeds and clerks of court to remove personal identification information from their public Web sites without a request from a specific individual.
- Allows registers of deeds and clerks of court to utilize optical character recognition technology to redact social security and drivers license numbers.
- Requires the Conference of Clerks of Superior Court to annually study and report to the Joint Legislative Commission on Governmental Operations on whether the clerks of superior court or the registers of deeds are implementing the act.
- Amends the Crime Victim's Compensation Act to protect the credit of crime victims during the pendency of victims' compensation fund applications and appeals by prohibiting a creditor from reporting certain debts to a consumer reporting agency as long as the victim has notified the creditor of the pending compensation claim.
- Enacts the Credit Monitoring Services Act which requires a credit monitoring service (a person who provides consumer credit monitoring for a fee) to notify a consumer of his or her right to a free credit report before collecting a fee for credit monitoring services. Failure to comply would constitute an unfair and deceptive trade practice.

This act became effective October 1, 2009. (BK)

Allow Recorded Phone Messages/Public Safety

S.L. 2009-364 (HB 1034) adds an exception to the law which generally prohibits telephone calls made using automatic dialing and recorded message players. The new exception permits calls made for the purpose of protecting the public health, safety, or welfare, by informing the telephone subscriber of a safety recall applicable to a product purchased by the

subscriber, a medication prescribed for the subscriber, or a filled prescription that the subscriber has not picked up from a licensed pharmacy.

The act also provides that in order for a recorded phone message to qualify as an exception, no part of the call may be used to make a telephone solicitation, and the person making the call must identify his or her name, contact information, and nature of the call.

This act became effective July 27, 2009. (WP)

Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act

S.L. 2009-374 (HB 1523) repeals the North Carolina Mortgage Lending Act and replaces it with the Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E.) to conform to the requirements of Title V, of the federal Housing and Economic Recovery Act of 2008. The federal act requires that any residential mortgage loan originator must be State licensed or federally registered. States had until August 1, 2009, to conform their statutes to the federal standards. After that date, loan originators in states that do not have conforming licensing statutes will be subject to the federal registration system.

The act establishes the North Carolina S.A.F.E. Mortgage Licensing Act, which includes the following:

- License and registration requirements for mortgage loan originators, as well as mortgage brokers, mortgage lenders, and mortgage servicers. Applications for licensure must be made through the Nationwide Mortgage Licensing System and Registry. Applicants must submit to a criminal history background check, a review of credit reports, and provide information related to administrative, civil, or criminal findings by any governmental jurisdiction. The act includes an exemption from the licensing requirement for any person who, as the seller, makes no more than five residential mortgage loans in a calendar year.
- License application fees of $1,250 for mortgage brokers, mortgage lenders, and mortgage servicers, and $125 for mortgage loan originators. Each additional branch office must pay a $125 filing fee. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.
- Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625, together with a $125 fee for each branch office. The renewal fee for mortgage loan originators is $67.50. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250, and for mortgage loan originators is $100.
- Licensees must complete at least eight hours of continuing education, including State and federal laws, ethics, and training related to lending standards for nontraditional mortgage products.
- Loan originators must be covered by a surety bond through employment with a licensee. A mortgage broker must post a minimum bond of $75,000. A mortgage lender or servicer must post a minimum surety bond of $150,000. The amount of the bond may increase based on the dollar amount in loans per year. The act also contains minimum net worth requirements.
- Imposes specific duties on mortgage brokers which are intended to protect the public. The Commissioner of Banks is given specific regulatory authority including authority to discipline licensees and impose civil penalties.
- The Commissioner also retains the authority contained in the repealed law to suspend a foreclosure proceeding when the Commissioner has evidence that a material violation of the law has occurred.
- The Banking Commission has authority to review any action taken by the Commissioner.

The bill contains instructions for the transition of current licensees into the new system over a period of time.

S.L. 2009-526, Sec. 1.1 (HB 191, Sec. 1.1) and S.L. 2009-550, Sec. 10.1 (HB 274, Sec. 10.1) each amend this act by adding a provision which clarifies that the Commissioner retains the authority to bring and maintain any action or pursue any remedy that was available under the repealed law for any violation of that law that occurred prior to the effective date of this act.

Except with regard to the transition provisions, this act became effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date. (KCB)

Revise Liquefied Petroleum Gas (LPG) Dealer Requirements

S.L. 2009-386 (HB 1084) requires all dealers who transport liquefied petroleum ("LP") gas to maintain at least $1 million in both general liability insurance and motor vehicle insurance, regardless of the size of the containers they sell. Dealers who sell LP gas in containers of at least 50 gallons water capacity, but do not fill or transport the containers, are required to register and maintain $100,000 in general liability insurance. The act requires dealers to register once rather than annually, and makes verification of the required insurance coverage a prerequisite to registration issuance or renewal.

The act also requires the Commissioner of Agriculture to conduct inspections of LP gas containers and facilities, increases the civil penalties for violations, and eliminates the former requirement that a violator receive notice of the violation and be allowed 45 days to cure it before being assessed with a civil penalty.

This act became effective October 1, 2009. (WP)

Extend Certain Development Approvals

S.L. 2009-406 (SB 831). See **Environment and Natural Resources.**

Small Business Assistance Fund

S.L. 2009-451, Sec. 14.3 (SB 202, Sec. 14.3) creates the Small Business Jobs Preservation and Emergency Assistance Fund to be administered by the Department of Commerce. The Fund consists of State appropriations, repayments of principal and interest on loans, fees, and other amounts received by the Department, as well as other public and private funds made available to the Fund.

The Section authorizes the Department to make loans to eligible small businesses on terms set in the statute. Moneys from the Fund may be used for:

- Emergency bridge loans where clear ability to repay has been established but credit remains unavailable.
- Other purposes related to small business job preservation as approved by the Department.

The amount of a loan made to a small business is limited to an aggregate total of no more than $35,000. The small business is required to report on the costs of the project for which the loan is made to the Department, and is subject to inspections. The Department is authorized to establish procedures to administer the program by rules.

The Department is required to report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by September 1 of each year on the allocation of money authorized by the section. Also, small businesses that receive money from the Fund must report on the details of how the money is used.

The section authorizes the Department to use up to $50,000 of the money in the Fund for administrative expenses.

This section became effective July 1, 2009. (KCB)

Economic Development Fund / Reporting Requirements

S.L. 2009-451, Sec. 14.5 (SB 202, Sec. 14.5) makes technical changes to the due dates for various reports from the Department of Commerce regarding economic development funds. It repeals a reporting requirement for the Employment and Training Grant Program and repeals a reporting requirement for the North Carolina Board of Science and Technology on the status of trends that reflect the impact of education on economic growth for the twenty-first century.

This section became effective July 1, 2009. (DC)

Study State Aircraft Fleets

S.L. 2009-451, Sec. 14.6 (SB 202, Sec. 14.6) requires the Program Evaluation Division of the General Assembly to study the number, use, and effectiveness of the State's aircraft fleets. The study must consider ways to achieve efficiency savings and whether it is desirable or feasible to sell any of the aircraft or to transfer any of the aircraft to another State agency. The Division must prepare a report of the findings and recommendations of the study and submit it to the House of Representatives and Senate Appropriations Committees and the Fiscal Research Division no later than May 1, 2010.

This section became effective July 1, 2009. (BK)

Executive Aircraft / Use for Economic Development Priority

S.L. 2009-451, Sec. 14.7 (SB 202, Sec. 14.7) provides that if an executive aircraft is not being used by the Department of Commerce for economic development purposes, the aircraft may be used by the Governor or a State official who is employed by an agency that does not have its own aircraft and is traveling on State business.

This section became effective July 1, 2009. (BK)

Main Street Grant Funds

S.L. 2009-451, Sec. 14.10 (SB 202, Sec. 14.10) established the Main Street Solutions Fund, which was formerly the Main Street Financial Incentive Fund. The Main Street Solutions Fund will provide grants to cities that are located in tier 2 and 3 counties and that have populations of between 10,000 and 50,000 people. Grants from $20,000 to $300,000 may be used for various purposes, including projects related to downtown revitalization. The Department of Commerce and cities that have been selected to receive a grant are required to provide a consolidated report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division no later than September 1 each year concerning the allocation of Main Street Solutions Fund grants in the previous fiscal year.

This section became effective July 1, 2009. (JH)

Tourist Destination Marketing

S.L. 2009-451, Sec. 14.11 (SB 202, Sec. 14.11) directs the Department of Commerce to promote historically underutilized businesses and supplier diversity when marketing the State, including promotion through advertising in minority media outlets and with minorities in the motorsports industry. The Department and businesses with which it contracts to promote

underutilized businesses and supplier diversity also are directed to make good-faith efforts to achieve diversity in the bidding and awarding of marketing and advertising contracts.

This section became effective July 1, 2009. (TH)

Extend Deadline for 20% Reduction of Petroleum Products Use for State Fleets/Clarify Report Requirement

S.L. 2009-451, Sec. 14.14 (SB 202, Sec. 14.14) extends the deadline from January 1, 2010, to July 1, 2011, for State agencies, universities, and community colleges having State-owned vehicle fleets to achieve a 20% reduction in the use of petroleum products pursuant to plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The section designates the State Energy Office as the agency responsible for receiving required reports from state agencies relating to the plans. It also clarifies that agencies must make annual reports on the efforts undertaken to achieve the required reductions to the State Energy Office through September 1, 2011, and that the State Energy Office must annually report the agencies' progress to the Joint Legislative Commission on Governmental Operations through November 1, 2011.

This section became effective July 1, 2009. (WP)

State Banking Commission/Fees and Assessment Changes Effective July 1

S.L. 2009-451, Sec. 14.20 (SB 202, Sec. 14.20) amends the law governing the State Banking Commission's authority to set the fees and assessments which it collects. The section directs the Commission to report to the Joint Legislative Commission on Governmental Operations its conclusion as to whether the estimated fees and assessments should be reduced or increased. Any reduction or increase of the estimated fees and assessments will become effective July 1 of the next fiscal year.

This section became effective July 1, 2009. (KCB)

Mortgage/Rate Spread and High-Cost Loans

S.L. 2009-457 (HB 1222) amends the rate spread and high-cost home loan statutes to update the definition of rate spread home loan and to clarify the definition of points and fees in connection with high-cost home loans. The act modifies the rate spread home loan definition and the determination of the borrower's ability to repay to allow lenders to meet either the new Federal Reserve rules defining rate spread loans or the current definition in North Carolina law. The State is not required to conform to federal rules, but including this definition will make it easier for some lenders to comply with the law, while not compromising consumer protections. A corresponding amendment is made to the Emergency Program to Reduce Home Foreclosures Act to preserve the definition of "rate spread home loan" for purposes of determining which loans are subject to the foreclosure reduction program.

The act also amends the definition of the term "points and fees" in the anti-predatory lending law. It clarifies that certain items or charges required to be disclosed under Regulation Z are included in the calculation of the threshold only when the items or charges are paid by the borrower at or before closing.

This act became effective October 1, 2009. (KCB)

Modernize Precious Metal Business Permitting

S.L. 2009-482 (HB 1637) amends the provisions governing the regulation of persons engaged in the business of purchasing precious metals as follows:

- Eliminates the 10% rule (exemption from licensing requirements for dealers whose second hand purchases of precious metals are less than 10% of their total purchases from the public).
- Clarifies transactions that are exempt from regulation.
- Exempts all pawnbroker transactions from regulation under the precious metals article.
- Adds palladium as a regulated metal.
- Increases the fee for a permit from $10 to $180 and increases the fee for registration of an employee from $3 to $10 with an annual renewal fee of $3.
- Requires employees of dealers to consent to criminal history checks and provides that the person may not be employed by the dealer if the person refuses to consent or if the person has been convicted of a felony and has not had citizenship rights restored for at least five years.
- Exempts employees from registration only if they are involved in precious metals purchases incidentally to other job responsibilities and the transactions are overseen by a registered employee or licensed dealer.
- Requires a dealer who applies for a special occasion permit to provide a physical address where purchased items are to be kept for the required hold period.
- Allows dealers to keep records electronically, but reporting must be in the manner authorized by the law enforcement agency.
- Provides that purchased items may not be sold or disposed of for a period of seven days after a transaction is reported.

This act became effective October 1, 2009. No dealer who is required to be licensed under this act, but who was not required to be licensed prior to the effective date of this act, will be guilty of engaging as a dealer in the business of purchasing precious metals without a license during the period between October 1, 2009, and January 1, 2010. (KCB)

Consumer Economic Protection Act of 2009

S.L. 2009-573 (SB 974) amends the law governing foreclosures under power of sale to require additional protections for homeowners. The act also amends and expands the laws regulating collection agencies to include debt buyers. With regard to foreclosures, the act limits the amount of the bond required to appeal from a finding of the clerk in a foreclosure proceeding in which the debtor owns and occupies the property as a principal residence. The bond is set at 1% of the principal balance of the note, provided that the clerk may set a lower amount if the clerk determines there is undue hardship or for good cause shown. The clerk may require a higher bond if there is a likelihood of waste or damage to the property pending appeal, or for good cause shown. In addition, a new provision is added directing the clerk, at the beginning of a foreclosure hearing on owner-occupied residential property, to inquire as to the efforts made to resolve the matter voluntarily. The clerk need not inquire as to efforts to resolve a delinquency prior to the foreclosure proceeding if the trustee submits an affidavit describing those efforts and the results. The clerk may continue the hearing for no more than 60 days, if the clerk finds good cause to believe that additional time or additional measures offer a reasonable likelihood of resolving the matter.

Under current law, no person, firm, corporation, or association may operate a collection agency without first obtaining a permit from the Commissioner of Insurance. The act amends the definition of the term "Collection agency" to include debt buyers. A debt buyer is a person or entity that purchases delinquent or charged-off consumer loans, or consumer credit accounts, or

other delinquent consumer debt and then aggressively pursues collection efforts. The following activities when conducted by collection agencies that are debt buyers are deemed unfair practices:

- Attempting to collect on a debt, including bringing suit or initiating arbitration proceedings, when the collection agency knows or reasonably should know that the collection is barred by the statute of limitations.
- Attempting to collect on a debt without valid documentation that the debt buyer actually owns the debt and without reasonable verification of the amount of the debt.
- Failing to give the debtor at least 30 days written notice before filing a legal action to collect the debt.
- Failing to include required information in any action filed by a debt buyer.

The act also increases the amount of the penalty the court may allow to a debtor and the civil penalties that may be imposed on collection agencies that violate the prohibitions of the act, and makes several other changes to the procedural law governing civil actions involving collection agencies.

Finally, the act amends the Identity Theft Protection Act to make credit unions that are in compliance with their federal regulator exempt from certain portions of the act.

This act became effective October 1, 2009, and applies to foreclosures initiated, debt collection activities undertaken, and actions filed on or after that date. (KCB)

Chapter 6
Constitution and Elections

Denise Huntley Adams (DHA), 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

Write-In Candidate Rule

S.L. 2009-47 (HB 220) rewrites the primary candidate notice and pledge to reflect the requirements of the write-in eligibility statute, which prohibits counting write-in votes for a write-in candidate who has been defeated in the primary for that same office. The candidate must pledge not to run as a write-in candidate for the same office.

This act became effective January 1, 2010, and applies with respect to primaries and elections held on or after that date. This act has received federal preclearance from the U.S. Department of Justice. (KM)

Pender/New Hanover House Districts

S.L. 2009-78 (HB 1621) establishes new district lines for House Districts 16 and 18 as established in S.L. 2003-434, in response to a March 2009 United States Supreme Court decision affirming the North Carolina Supreme Court holding on *Pender v. Bartlett*, requiring District 18 to be redrawn.

For additional information on redistricting in North Carolina, see the 2003 Redistricting Guide, Fourth Edition, Corrected Copy; the 2009 Supplement to the 2003 Redistricting Guide; and the 2002 and 2003 Substantive Ratified Legislation publications.

The act enacts new district lines for District 18, changing only Districts 16 and 18, both districts formerly representing Pender and New Hanover Counties. Maps and statistics of the districts can be obtained by contacting the Research Division.

This act became effective June 11, 2009, and the United States Department of Justice issued a letter on September 18, 2009, stating it would not object to the implementation of the plan. (EC)

Secretary of State Notify Electors

S.L. 2009-96 (HB 170) provides that the office of presidential elector may be held in addition to the maximum number of appointive offices allowed by statute. The act requires the Secretary of State to notify the following groups of the dual-office holding requirements of the North Carolina Constitution and General Statutes:

- Political parties authorized to nominate electors, in January of each year in which electors are elected.

- Candidates for electors, upon receipt of the candidates' names.

The Secretary of State must specifically inform each group of the requirement that if a person elected as elector holds another elective office at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office.

This act became effective June 11, 2009. This act has received federal preclearance from the U.S. Department of Justice. (KM)

Municipal District Elections/Census

S.L. 2009-414 (SB 38) makes permanent special rules applicable to municipal redistricting following a federal decennial census, by making the occurrence of the federal decennial census the triggering event for consideration of the special rules.

This act became effective August 5, 2009. The act may not be implemented until the law has received preclearance approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice. (KM)

Campaign Finance Amendments

S.L. 2009-534 (HB 1111) makes various changes to the campaign finance statutes, including the following:

- **Candidacy Exploration. –** The act amends the definition of "candidate" to specify that an individual becomes a candidate for campaign finance purposes when positive action is taken to bring about the individual's nomination or election, including making a public announcement of a definite intent to run.
- **Clarification of terms of Legal Expense Funds. –** The act makes a technical change to Article 22M, Legal Expense Funds, by eliminating the use of the term "contribution" and substituting the term "legal expense donation" to provide clarity between political committees and legal expense funds. The term "legal expense donation" is defined as donations by various means to a legal expense fund for uses specifically permitted under that Article. It also defines "expenditure" as expenditures by various means from a legal expense fund for uses specifically permitted under that Article.
- **Contributions to Legal Expense Funds. –** The act provides that a candidate or candidate campaign committee may use contributions for a legal expense donation not in excess of $4,000 in a calendar year to a legal expense fund.
- **Remove Promise from Contribution Definition. –** The act amends the definitions "contribution" and "expenditure," and provides that an expenditure forgiven by the person or entity to which it is owed must be reported as a contribution from that person or entity.
- **Treasurer Residency Requirements. –** The act requires that treasurers of candidate, political, or referendum committees must be North Carolina residents.
- **Threshold for Financial Reports. –** G.S. 163-278.10A exempts candidates who fall below a $3,000 threshold in receipt of contributions, loans, and spending, respectively, from filing certain required reports of contributions, loans, and expenditures. To qualify for the exemption, a candidate's treasurer must file a certification in the organizational report that the candidate does not intend either to receive in contributions or loans or to expend more than $3,000 to further the candidate's campaign. The exemption for campaigns below the $3,000 threshold also applies to political party committees, but all contributions, expenditures, and loans during an election must be counted against the political party committee's threshold amount. The act amends G.S. 163-278.10A by lowering the threshold for receiving and expending by a campaign from $3,000 to $1,000 to qualify for the

exemption from filing certain required campaign finance reports. The exemption is limited to candidates for municipal office, county office, local school board offices, soil and water conservation district board of supervisors, and sanitary district boards. This change results in all other campaigns receiving or expending funds having to file all the required campaign finance reports.

- **Clarification of Applicability of Article 22J. –** G.S. 163-278.5 provides that the campaign finance laws apply to primaries and elections for North Carolina offices and to North Carolina referenda. It specifically states that the campaign finance laws do not apply to primaries and elections for federal offices, offices in other States, or to non-North Carolina referenda. The provisions in the campaign finance law that regulate non-North Carolina entities do so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda. Currently, the same language applies to these other Articles in Chapter 163, Election Law: Article 22B – Appropriations from the North Carolina Political Parties Financing Fund; Article 22D – The North Carolina Public Campaign Fund; Article 22E – Electioneering Communications; Article 22F – Mass Mailings and Telephone Banks: Electioneering Communications; Article 22G – Candidate-Specific Communications; Article 22H – Mass Mailings and Telephone Banks: Candidate-Specific Communications; and Article 22M – Legal Expense Funds. The act applies the same general applicability language in G.S. 163-278.5 to Article 22J, The Voter-Owned Elections Act.
- **Electioneering and Candidate Specific Communications. –** Articles 22E and 22F of G.S. Chapter 163 regulating "electioneering communications," and Articles 22G and 22H of Chapter 163 regulating "candidate-specific communications," apply to communications on radio, TV, mass mail, or phone bank that do all of the following:
  - Refer to a clearly-identified candidate for statewide or legislative office.
  - Are "targeted to the relevant electorate" (defined term that sets thresholds for the number of potential voters in the candidate's election who could be reached by the communication).
  - For electioneering communications, are made during the period 60 days before a general election or 30 days before a primary. For candidate specific communications, are made outside the 30-day and 60-day pre-voting windows, but between the candidate filing period and general election day.

  The act exempts from the definitions of both electioneering communications and candidate-specific communications a communication that meets all of the following criteria:
  1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
  2. Does not take a position on any candidate's or officeholder's character or qualifications and fitness for office.
  3. Proposes a commercial transaction.

This act became effective December 1, 2009. (EC)

Absentee Voting Improvements

S.L. 2009-537 (SB 253) makes the following changes to the absentee voting and military absentee voting statutes.

- Requires the State Board of Elections (SBOE) to approve an official register of military absentee ballot applications and ballots issued, and permits the SBOE to provide for the register to be kept by electronic data processing equipment.
- Requires all absentee ballot forms, container-return envelopes, and instruction sheets to be printed no later than 60 days before the statewide general election in even-numbered years, and no later than 50 days before the primary or any other election.

An exception applies to municipal elections, where those items must be available no later than 30 days before an election.

- Requires that applications and ballots must not be mailed earlier than 60 days before the statewide general election in even-numbered years and no earlier than 50 days prior to any other election.
- Requires only one, rather than two, witnesses for absentee ballot voting.
- Adds "A United States citizen currently outside the United States" to the list of identification choices to designate when using the Certificate of Absentee Voter for military absentee ballots.
- Removes the requirement that the reason assigned for requesting absentee ballots be included in the official register of absentee requests maintained by county boards of elections, and makes the registry open 60, rather than 50, days before an election in which absentee ballots are authorized.
- Permits acceptance of absentee ballots issued under the absentee voter registration provisions if postmarked by the day of the election and received no later than 5:00 p.m. three days after the election, and acceptance of absentee ballots issued under the military absentee voter registration provisions if received by 5:00 p.m. three days after the election.
- Requires county boards of elections to prepare a list of all absentee ballots issued under the absentee voting and military absentee voting statutes, approved by the county board of elections, postmarked by the day of the election (for absentee voting ballots), received no later than three days after the election, and not included on the certified list of absentee ballots returned prior to 5:00 p.m. the day before the election. The list must be supplemented with new information daily until the deadline for receipt of absentee ballots, and the chairman of the county board of elections must execute a sworn statement certifying the final list. Directs the county board to post one copy of the list in a conspicuous location for public inspection and to send a copy of the final list to the SBOE by 10:00 a.m. the day following the deadline for receipt of absentee ballots. Requires the county board to retain the list for 22 months before it may be destroyed.
- Allows absentee ballots issued under the absentee voting and military absentee voting statutes to be challenged between noon the day after the election and 5:00 p.m. the day after the deadline for receipt of absentee ballots.
- Authorizes the county boards of elections to meet to count absentee ballots received after election day. The meeting may be held following the day of the election and before the day of canvass, when an additional meeting has been provided for by resolution.
- Grants the SBOE emergency rule-making powers to develop special procedures or requirements to facilitate absentee voting by absent uniformed service or other overseas voters directly affected by an international, national, or local emergency, or other situation which makes substantial compliance with the military absentee voting statutes or the federal Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable.
- Directs the SBOE to allow counties to mail out absentee ballots as soon as the ballots are available, in those instances where the law requires that ballots be available for mailing 60 days before the general election and ballots are not ready by that date.

This act became effective January 1, 2010, and applies with respect to elections held on or after that date. The act may not be implemented until the law has received preclearance approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice. (KM)

Election Administration Amendments

S.L. 2009-541 (HB 908) makes changes to the laws of election administration, as follows:

- **Voting Equipment Responsibilities. –** The act eliminates the State Board of Elections' (SBOE) responsibility for ballot coding, and instead requires that the SBOE oversee ballot coding and allow counties to contract or do their own ballot coding if certified by the SBOE. The act allows the SBOE to use videoconferencing and other methods for training. Counties must maintain the software licensing and maintenance agreements on their voting systems; if the SBOE does maintenance for a noncompliant county, the county must reimburse the State. Counties must provide adequate technical assistance for support of their voting systems, in conjunction with the SBOE. These provisions became effective January 1, 2010.
- **Local conformity with State Directives. –** The act requires county boards of elections to perform duties required by SBOE's rules and directives and those of the Executive Director of the SBOE. A county board must include in its instructions to the county director that the director do what the SBOE has delegated.
- **17-year-old Voters. –** The act adds several clarifying changes to the current law allowing 17-year-olds to register and vote in a primary if they will be 18 by the day of the general election. The act clarifies that 17-year-olds may use the new same-day registration at early voting sites for this purpose.
- **Preregistration of 16- and 17-year-old Voters. –** The act allows 16- and 17-year-olds to preregister to vote and to be automatically registered upon reaching 18, after they verify qualifications and address. The preregistrations may be done at the Division of Motor Vehicles and at public assistance offices. The preregistrations will be forwarded to the SBOE. Citizens Awareness Month will be an annual, rather than a biennial, requirement and registration and preregistration drives may occur in high schools, in accordance with local school board policy, during that month. This provision became effective on January 1, 2010.
- **Format for voter registration records. –** The act allows the State and county boards of elections to keep voter registration records in any format allowed by the State Archives. Prior law required the records be kept in hard copy.
- **Designation of Voting Tabulation Districts. –** In reporting the voting precincts as of January 1, 2008, to the Census Bureau as the Voting Tabulation Districts of the State, the Executive Director of the SBOE may make adjustments to those voting precincts to assure accurate election administration and reporting of election results.
- **Electioneering Around Early Voting Sites. –** Prior law required boards of elections to provide a place for electioneering just beyond the buffer zone of any voting place, and allowed boards of elections to exempt a polling place from electioneering if certain extenuating circumstances were present and the exemption was approved by the Executive Director of the SBOE. The act removes early voting sites from the potential exemption, making allowance of electioneering outside an early voting site an absolute requirement. The exemption is still available for election-day voting places.
- **Use of Public Buildings for Early Voting. –** A county board of elections may request and potentially obtain the use of public buildings as early voting sites. The county board must request the use of the building at least 90 days before the beginning of the early-voting period. The request must be specific about times and dates of use. The entity in control of the building has 20 days to respond. If there is no response within 20 days, the county board may use the building. If there is a timely negative response, the county board and the entity controlling the building must negotiate in good faith for a resolution, and if there is no agreement within 45 days after the response is received, the SBOE will resolve the matter.

- **Attorneys Fees in Election Protest Appeals. –** Attorneys fees may not be awarded against the SBOE in an appeal of its decision in an election protest.
- **Public Hearings for Instant Runoff Voting. –** Before a local governing board adopts a resolution to participate in a pilot to use Instant Runoff Voting in a local election, a local governing board must hold a public hearing with 10 days' notice. Instant Runoff Voting is an election method in which ranked-choice voting is used to compress an election and runoff into one election.
- **Studies by Oversight Committee. –** The Joint Legislative Elections Oversight Committee is directed to study joining the National Popular Vote Interstate Compact, making uniform the laws on filling vacancies in local elective offices, and adopting a system of appointment of judges with a voter retention process.
- **Grounds for Challenging Voter. –** The act, as amended by S.L. 2009-526, Sec. 1.2 (HB 191, Sec. 1.2), allows a person challenging a registered voter before election day the right to challenge the voter on the ground that the voter who registered is not who he or she claims to be. Prior law provided for a false identity challenge on election day, but did not authorize a pre-election challenge on that ground.

Except as otherwise provided in individual sections, this act became effective August 28, 2009. (BG)

Public Campaign Fund Changes

S.L. 2009-543 (HB 907) makes changes to three aspects of the operation of the judicial public campaign law enacted in 2002, which provides public money to candidates for the Supreme Court and Court of Appeals if those candidates abide by certain fundraising and spending requirements. The act provides as follows:

- **Qualifying Contributions. –** The act amends the requirement that candidates seeking public funding raise a certain amount in "qualifying contributions." The purpose of requiring that candidates raise qualifying contributions is to limit the program to candidates who have demonstrated a threshold amount of public support. Qualifying contributions must be raised from registered North Carolina voters in amounts between $10 and $500. The candidate must receive 350 such qualifying contributions, and they must reach a dollar threshold of 30 times the filing fee for the office. The changes included the following:
  - Method of payment. Prior law said qualifying contributions must be accepted only by check or money order. The act expands this to include any non-cash method otherwise allowed for contributions.
  - No raffles. Previous law said "no payment, gift, or anything of value shall be given in exchange for a qualifying contribution." An issue arose over whether a raffle ticket was something of value. The act settles the question by adding that "the opportunity to win anything of value" shall not be given in exchange for a qualifying contribution.
  - Multiple contributions from same individual. The act provides that multiple qualifying contributions from the same person can count as only one qualifying contribution, for purposes of meeting the threshold. Multiple contributions from the same non-family member may not exceed $500.
  - Family contributions. Prior law said the candidates themselves and their family members (spouse, parent, child, sibling) each may contribute up to $1,000 to the campaign. The act provides that up to $500 of a family member's contribution may be treated as a qualifying contribution.
- **Matching Funds.** Prior law provided funds, in addition to the basic public grant, for a participating candidate who is outspent by a nonparticipating candidate or targeted by independent expenditures or electioneering communications. The changes made by the act are:

- In the primary. The act provides that matching funds are available in a primary to a participating candidate who has a primary opponent or to a certified candidate who has no primary opponent but who is clearly targeted by opposition spending.
- No matching funds for all-candidate ads. The act provides that no matching funds will be triggered by an ad that supports or opposes all the candidates in the same race.

➢ **Voter Guide.** The act changes the number of words allotted to candidates in the State Board of Elections Judicial Voter Guide. Judicial candidates are limited to an entry of 250 words.

This act became effective August 28, 2009. (BG)

Studies

Legislative Research Commission

Superior Court Judicial Elections

S.L. 2009-574, Part II, Sec. 2.50 (HB 945, Part II, Sec. 2.50) authorizes the Legislative Research Commission (Commission) to study the desirability and feasibility of a system of electing all superior court judges in which each superior court judge is elected separately, as is already provided for in the appellate division and the district court, and in which superior court vacancies are filled at the next election for a full eight-year term, as is already provided for in the appellate division. The Commission may report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

This section became effective September 10, 2009. (DHA)

Referrals to Existing Commissions/Committees

Joint Legislative Elections Oversight Committee to Study Standardizing Select Election Processes

S.L. 2009-574, Part IX, Secs. 9.1 and 9.2 (HB 945, Part IX, Secs. 9.1 and 9.2) authorizes the Joint Legislative Elections Oversight Committee (Committee) to study the issues raised by the following three bills introduced in the 2009 Regular Session of the 2009 General Assembly: National Popular Vote Interstate Compact (SB 417), Filling Vacancies in Local Offices (SB 596), and Judicial Appointment/Voter Retention (SB 878). The Committee may report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

This section became effective September 10, 2009. (DHA)

Joint Legislative Elections Oversight Committee

S.L. 2009-574, Part XLVI, Sec. 46.1 (HB 945, Part XLVI, Sec. 46.1) authorizes the Joint Legislative Elections Oversight Committee (Committee) to study the constitutionality of Article 22A of Chapter 163 of the General Statutes, Regulating Contributions and Expenditures in

Political Campaigns. The Committee may report its recommendations to the 2010 Regular Session of the 2009 General Assembly on or before its convening.

This section became effective September 10, 2009. (DHA)

Chapter 7
Courts, Justice, and Corrections

Brenda Carter (BC), Ericka Churchill (EC), Tim Hovis (TM), Jeff Hudson (JH),
Kara McCraw (KM), Hal Pell (HP), Ben Popkin (BP),
Kelly Quick (KQ), Wendy Graf Ray (WGR), Susan Sitze (SS)

Enacted Legislation

Technical / Clarifying Changes / Juvenile Code

S.L. 2009-38 (HB 1272) makes technical and clarifying changes to the juvenile code relating to abused, neglected, and dependent juveniles, as follows:

- Adds G.S. 14-27.2A (rape of a child by an adult offender) and G.S. 14-27.4A (sexual offense with a child by an adult offender) to the list of offenses which, when committed by a parent, guardian, custodian, or caretaker, make the juvenile an abused juvenile.
- Clarifies that the juvenile is a party to an action to terminate parental rights.
- Makes clarifying changes to the procedure for issuance of summons in terminations of parental rights and the procedure for notice in pending abuse, neglect, and dependency cases.

This act became effective May 27, 2009. (SS)

Guilty Plea Form Revisions

S.L. 2009-86 (HB 1039) directs the Administrative Office of the Courts (AOC) to revise the "Transcript of Plea" form provided to a defendant who:

- Enters a plea of "not guilty" or "no contest" to a criminal offense, to clearly state that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense.
- Pleads guilty to a criminal offense, to reflect that under G.S. 15A-268, there may be a shorter preservation period for biological evidence when a defendant pleads guilty than if the defendant had been tried and convicted by a jury for the same offense.

The AOC was required to revise the form by September 1, 2009, and make the form available for pleas of guilty or no contest entered on or after October 1, 2009.

This act became effective June 11, 2009. (TH)

Permit Access to Capital Defendants

S.L. 2009-91 (HB 1037) requires that counsel for an indigent defendant who has been sentenced to death be permitted by the Department of Correction to visit the defendant on the day of the filing of any of the following:

- An opinion of the North Carolina Supreme Court, or by a federal court, affirming or reversing the trial court judgment sentencing defendant to death.
- An opinion or decision of the North Carolina Supreme Court, or by a federal court, regarding defendant's post-conviction petition for relief from a sentence of death.

The visit must be allowed during regular business hours for not less than one hour, unless a visit outside regular business hours is agreed to by both the institution administrator and defendant's counsel. The act is not to be construed to limit the adequate and reasonable

opportunity for attorneys to generally consult with clients sentenced to death, or to mandate an attorney visit during an emergency at an institution where a defendant is confined.

This act became effective June 11, 2009. (KM)

Summary Ejectment / Trials

S.L. 2009-246 (HB 630) provides that when an officer is required to make a visit to a defendant's place of abode to attempt personal delivery of service, the visit must occur at least two days prior to the day the defendant is required to appear to answer the complaint. The two-day period excludes legal holidays.

This act became effective October 1, 2009, and applies to actions filed on or after that date. (BC)

Low-Risk Probationers May Be Unsupervised

S.L. 2009-275 (SB 1089) authorizes a probation officer to transfer a misdemeanant to unsupervised probation if the misdemeanant (i) is not subject to special conditions, (ii) was placed on probation for the collection of court-ordered payments, and (iii) has a risk assessment showing that the misdemeanant is a low-risk offender. Transfer of a misdemeanant to unsupervised probation does not relieve the offender of the obligation to make court-ordered payments as a condition of probation.

This act became effective July 1, 2009. (TH)

Juvenile Code Revisions

S.L. 2009-311 (HB 1449) makes substantive and procedural changes to the Juvenile Code.

Abuse, Neglect, and Dependency. – The act makes numerous changes to the abuse, neglect, and dependency provisions of the Juvenile Code.

Confidential information. – The act provides for the examination by the juvenile's guardian ad litem or the juvenile, of confidential information relating to a child protective services assessment, even if the juvenile is 18 or older. The act also authorizes a State judge to order the Department of Social Services (DSS) to disclose certain confidential information, and authorizes DSS to disclose confidential information in certain situations.

Discovery. – The act makes changes relating to discovery in an abuse, neglect, or dependency case, including authorizing DSS to share confidential information with other parties, and allowing the courts to address discovery among parties. Information obtained through discovery cannot be otherwise disclosed if the disclosure is prohibited by State or federal law. Unless local rules provide otherwise, these provisions do not apply to information or reports held by the child's guardian ad litem; except that reports and records must be shared with all parties before being submitted to the court.

Venue. – The act amends the law to allow a change of venue after an adjudication of abuse, neglect, or dependency, and provides standards and procedures for changes of venue after adjudication.

Review Hearings. – The act makes changes related to review hearings where a juvenile has been removed from parental custody or parental rights have been terminated, or both have occurred, to require DSS either to (i) provide the clerk with the name and address of any foster parent, relative, or preadoptive parent caring for the child, or (ii) file written documentation with the clerk that the child's care provider was sent notice of the hearing. The act also requires DSS to serve notice on the guardian ad litem for the juvenile if the juvenile is the subject of an adoption decree prior to the date scheduled for the review.

Termination of Parental Rights. – The act makes procedural changes to termination of parental rights proceedings. Provisional counsel must be appointed when a petition is filed if the parent is not already represented by counsel, and any summons issued in the termination of parental rights must contain notice that previously appointed counsel still representing the parent in an abuse, neglect, or dependency case must continue to represent the parent in the termination, unless the court orders otherwise.

The act also requires the court to conduct a pretrial hearing either before or with the adjudicatory hearing on termination for the court to consider the retention or release of provisional counsel, whether a guardian ad litem should be appointed for the juvenile, whether procedural requirements have been met, and other issues that can be addressed as preliminary matters.

Undisciplined and Delinquent Juveniles. – The act makes several changes to the Juvenile Code related to undisciplined and delinquent juveniles. The act:

- Creates a new provision requiring a juvenile court counselor or any other person with cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, to make a report to the county department of social services.
- Requires a copy of a nonsecure custody order and a copy of the petition be given to the person or agency with whom the juvenile is placed pursuant to the nonsecure custody order. Additionally, the act requires that the director of DSS be provided notice and a chance to be heard before the court may place an undisciplined or delinquent juvenile in DSS custody.

This act became effective October 1, 2009. (SS)

Extend Indigent Defense Service Copy Exemption

S.L. 2009-317 (HB 447) expands the exemption from document copying fees charged by the clerk of superior court to include attorneys under contract with the Office of Indigent Defense Services to represent an indigent person at State expense, if the copies are made in connection with the contract.

This act became effective July 17, 2009. (JH)

Chief Court Counselor Delegation

S.L. 2009-320 (HB 1347) authorizes the chief juvenile court counselor in each district to:

- Delegate to a juvenile court counselor or supervisor the authority to carry out specified responsibilities of the chief juvenile court counselor to facilitate the effective operation of the district, and
- Designate a juvenile court counselor in the district as acting chief court counselor, to act during the absence or disability of the chief juvenile court counselor.

This act became effective July 17, 2009. (SS)

District Court District 13 Residency

S.L. 2009-341 (SB 56) rearranges the residential designations for the six District 13 District Court judgeships as follows:

- For one of the judgeships, all candidates must reside in Bladen.
- For two of the judgeships, all candidates must reside in Columbus.
- For three of the judgeships, all candidates must reside in Brunswick.

The act does not change the fact that all the judges are elected by all voters in the district, and does not change that each judge is elected separately. It designates the county-residence requirements of candidates by the judgeship held by each of the current incumbents.

This act becomes effective on the date upon which the changes made in the act are approved by the U. S. Department of Justice under section 5 of the Voting Rights Act of 1965. (EC)

Modify Criminal Justice Partnership Program

S.L. 2009-349 (SB 1076) extends eligibility for the Criminal Justice Partnership Program to those offenders sentenced to community punishment. Offenses subject to community punishment include most misdemeanors and some Class I felonies. Community punishments include supervised or unsupervised probation, outpatient drug/alcohol treatment, community service, restitution, and fines. Previously, only those sentenced to an intermediate punishment were eligible. The offenders are eligible if the Division of Community Corrections determines that, based upon a risk assessment, the offender would benefit from program participation.

This act became effective December 1, 2009. (HP)

Free Medical Exam-Victims of Rape/Sex Offenses

S.L. 2009-354 (HB 1342). See **Health and Human Services**.

Child Witness Testimony/Procedures

S.L. 2009-356 (HB 192) provides a procedure for a minor witness to testify outside the presence of a defendant in a criminal case, or outside the presence of a juvenile who is alleged to have committed an offense that would be a criminal offense if committed by an adult.

Remote testimony is authorized if the court finds that the minor would suffer severe emotional distress if he or she had to testify in front of the defendant—not just because of the courtroom atmosphere; and as a result of the distress, the minor would have difficulty communicating to the jury, or judge (if no jury). The judge, jury, and defendant must be able to view the minor's demeanor in a similar manner as if the minor were testifying from the witness stand in the courtroom. The defense counsel must be in the physical presence of the minor, and have a full and fair opportunity for cross-examination. The defense counsel also must be able to communicate privately with the defendant.

This act became effective December 1, 2009, and applies to hearings and trials held on or after that date. (HP)

Small Claims Court/Trials

S.L. 2009-359 (HB 629) requires a magistrate to order a continuance if the time set for trial of a small claim action is earlier than five days after service of the magistrate summons. The act does not apply to actions for summary ejectment.

This act became effective October 1, 2009, and applies to actions filed on or after that date. (BC)

Innocence Commission/Limited Witness Immunity

S.L. 2009-360 (HB 937) authorizes the North Carolina Innocence Inquiry Commission to compel the testimony of any witness. If a witness asserts the privilege against self-incrimination, the Commission chair may order the witness to testify or produce other information if the chair determines that the witness's testimony likely will be material to reach a correct factual determination in the case at hand. However, the Commission chair may not order the witness to

testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity.

The order must prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity applies throughout all proceedings conducted by the Innocence Inquiry Commission. The limited immunity granted under these provisions will not prohibit prosecution of (i) statements made under oath that are unrelated to the Commission's formal inquiry, (ii) false statements made under oath during proceedings of the Innocence Inquiry Commission, or (iii) prosecution for any other crimes.

This act became effective July 27, 2009. (SS)

Probation Reform

S.L. 2009-372 (SB 920) makes various changes to the statutes relating to the supervision of offenders on probation.

Examination of Juvenile Records. – The act authorizes probation officers, without a court order, to examine juvenile records of adjudication of delinquency of persons on supervised probation, if the offender is on probation for an offense committed prior to 25 years of age. The record is limited to adjudications of delinquency for felony offenses and may be used only for assessing risk relating to the supervision of the offender. The Division of Community Corrections must designate a staff person in each county to obtain juvenile records. The records shall remain confidential and any copies shall be destroyed upon termination of the period of probation. The Department of Juvenile Justice and Delinquency Prevention is authorized to share information with the Division of Community Corrections about whether or not a juvenile record exists and in which counties they are located.

Warrantless Search. – The act removes warrantless search provisions from "special" conditions of probation, modifies those provisions, and makes them "regular" conditions of probation that apply to all persons on supervised probation, unless otherwise ordered by the court. Probation officers may conduct warrantless searches of the probationer's person, vehicle, and premises, while the probationer is present, for purposes directly related to the probation supervision. These searches may include testing for the presence of illegal drugs. Law enforcement officers may conduct warrantless searches of the probationer's person and vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon.

Other changes. – The act also:

- Moves the prohibition against use, possession, or control of illegal drugs or controlled substances from a "special" condition of probation to a "regular" condition. The act also creates mandatory conditions of probation for anyone placed on probation under an intermediate punishment.
- Changes the law regarding the "tolling" of a period of probation based on charges for a new crime on probation. The period of probation is tolled, but while it is tolled the person remains subject to all the conditions of probation, including supervision fees. If the person is found not guilty, or the charges are dismissed, the tolled period will be credited towards the period of probation.
- Makes several clarifying changes to statutes related to the Division of Community Corrections supervising persons on deferred prosecution and supervising community service.

Effective Dates. – The provisions of this act relating to access to juvenile records became effective December 1, 2009, and apply to the juvenile records of adjudication of delinquency for offenders placed on probation for offenses committed on or after that date; however, the juvenile records of adjudication of delinquency authorized to be accessed may include adjudications of delinquency that occurred before December 1, 2009. The provision related to

the "tolling" of a probation period applies to hearings held on or after December 1, 2009. The remainder of this act became effective December 1, 2009, and applies to offenses committed on or after that date. (SS)

Clarify Entitlement to Counsel/Appointment

S.L. 2009-387 (HB 506) makes the following changes to various laws related to criminal court proceedings:

- Provides the circumstances under which the petitioner, respondent, or Administrative Office of the Courts is required to pay witness fees in an incompetency action.
- Provides the circumstances under which the petitioner, respondent, or Office of Indigent Defense Services is required to pay guardian ad litem fees in an incompetency action.
- Authorizes the clerk of superior court to appoint a guardian ad litem in a guardian proceeding, if the clerk determines that the ward is incompetent and the ward's interests are not being adequately represented.
- Provides that an indigent person is entitled to appointed counsel in a proceeding involving placement into the program for satellite-based monitoring of sex offenders.
- Clarifies that in a hearing on whether certain sex offenders are to be placed into the satellite-based monitoring program, the Department of Correction shall be represented by the district attorney and the hearing shall be held in superior court.
- Provides that in a hearing on whether a sex offender may be placed into the satellite-based monitoring program the offender is entitled to legal counsel. If the offender is indigent, counsel is to be appointed under the rules of the Office of Indigent Defense Services.
- Provides that in capital cases, instead of applying to the superior court for appointment of counsel, a defendant who desires counsel may apply directly to the Office of Indigent Defense Services (IDS). If the defendant was adjudicated indigent for the trial or direct appeal, then the IDS appoints the counsel. If not previously adjudicated indigent, then IDS must request the superior court where the defendant was indicted to make that determination. Upon a court finding of indigency, the IDS appoints the counsel.

This act became effective July 31, 2009. (JH)

Venue/Municipalities in Multiple Districts

S.L. 2009-398 (HB 1077) amends the law concerning the location for the trial of certain criminal offenses committed within municipalities lying in four or more counties, each of which is in a different judicial district. The act also prescribes the authority of magistrates within those municipalities. At the time of its enactment, the act applied only to the City of High Point.

The act provides for charges brought by municipal law enforcement officers to be disposed of in the portion of the municipality in which a majority of the municipality's voters reside, and specifies that the consent of the chief district court judge for the district in which the offense occurred is not required. The act provides that an assigned magistrate may exercise authority as if all the counties were in the same court district, and the records, reports, and monies collected in connection with the magistrate's exercise of authority will be transmitted to the clerk of the superior court district for the county in which the offense was committed. With regard to venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court, criminal cases based on charges brought by municipal law enforcement officers and arising in the portions of the municipality where a minority of the voters reside may be handled in the superior court district where the majority of the voters in the municipality reside, with no allowance for objections by the defendant or the district attorney.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (BC)

Notice of Hearing/Unsupervised Probation

S.L. 2009-411 (SB 513) authorizes service by mail of notices of unsupervised probation violation hearings, and clarifies the notice procedure for community service staff notifications for a willful failure to complete community service requirements. A notice of a hearing in response to a violation of unsupervised probation may be:

- By personal delivery.
- Deposited in the U.S. Mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender. The notice must be mailed at least 10 days prior to the hearing.

If the notice is mailed and the defendant fails to appear, the court is authorized to either:

- Terminate the probation and enter appropriate orders for outstanding monetary obligations.
- Provide for further notice and proceedings to take any authorized action for a probation violation.

This act became effective December 1, 2009. (HP)

Delay Bond/Probationer Arrested for Felony

S.L. 2009-412 (SB 1078) amends the law relating to the pretrial release of probationers arrested for a felony, or arrested for a probation violation while having a pending felony charge.

- If a probationer is charged with a felony:
  - A judicial official must make written findings as to whether the probationer is a danger to the public prior to imposing conditions. If the probationer is a danger, then execution of an appearance bond is the only option for release.
  - If there is insufficient information, a first appearance date shall be set within 96 hours from the time of arrest. If the necessary information is provided at any time prior to the first appearance, then any judicial official may set the conditions of pretrial release.
- If a probationer is charged with a probation violation, and has a pending felony charge:
  - Release must be denied until a revocation hearing if the judicial official determines that the defendant poses a danger to the public.
  - The probationer may be held up to seven days if there is insufficient information to determine dangerousness. If the probationer has been held seven days, and the court has been unable to obtain any additional information relating to danger to the public, the probationer will be brought before a judicial official who will impose conditions of pretrial release.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (HP)

Magistrates Provide Appointment of Counsel

S.L. 2009-419 (SB 514) allows magistrates authorized by the chief district court judge to provide for the appointment of counsel for an indigent person, and allows chief district court judges to designate those magistrates, who are duly licensed attorneys, who are authorized toprovide for the appointment of counsel to indigent persons. Magistrates are authorized to appoint counsel for potentially capital offenses, or to accept a waiver of counsel.

This act became effective July 1, 2009. (JH)

No Set Aside of Bond Forfeit / Actual Notice

S.L. 2009-437 (SB 929) extends the period during which a district attorney or board of education may object to a motion to set aside a forfeiture (from 10 to 20 days after the motion is served) and adds intentional failure to sign a motion to set aside as grounds for sanctions and denial of the motion. The act also requires that a motion for sanctions and notice of hearing be served on the surety at least 10 days before the hearing and specifies the following sanction amounts: 25% of bond for failure to sign motion, 50% of bond for failure to attach required documentation, and 100% or more for filing fraudulent documentation. Finally, the act specifies that a bond forfeiture may not be set aside in cases in which the surety or bail agent had actual notice (as indicated on the defendant's release order by a judicial official) that the defendant had failed to appear two or more times in that case.

This act became effective January 1, 2010, and applies to all motions to set aside filed on or after that date and to all bail bonds executed on or after that date. (BP)

Western Justice Academy / Wildlife Resources Firing / Archery Range

S.L. 2009-449 (HB 406) authorizes the Department of Justice and the Wildlife Resources Commission to develop a joint plan for construction of a firing range on land owned by the Wildlife Resources Commission, and provides that any firing range constructed on the grounds of the Western Justice Academy must be an indoor facility.

The act authorizes the Department of Justice and the Wildlife Resources Commission to identify a tract of land in the Green River game land and provide for a firing range that can accommodate the needs of the criminal justice officers attending the Western Justice Academy; federal, State, and local agencies; community college law enforcement training; and the law enforcement officers of the Wildlife Resources Commission, as well as provide a facility for hunter safety classes supervised and conducted by the Wildlife Resources Commission.

This act became effective August 7, 2009. (SS)

Office of Indigent Defense Services Report

S.L. 2009-451, Sec. 15.13 (SB 202, Sec. 15.13) requires the Office of Indigent Defense Services to report on:

- The volume and cost of cases handled in each district.
- Actions taken by the Office to improve cost-effectiveness and quality of indigent defense, including the capital case program.
- Plans for any changes in rules, standards, or regulations.
- Any recommendations for legislation or funding to assist in improving funds management, including the feasibility and desirability of regional public defender offices.
- The progress of the pilot program for alternative scheduling, with a final report on March 1, 2011.
- The progress on the feasibility study on developing a statewide system for obtaining indigent case information upon appointment of counsel, with a final report on March 1, 2011.

The report must be submitted by March 1 of each year to the Chairs of the Appropriations Committees, and the Chairs of the Appropriations Subcommittees on Justice and Public Safety, of the House of Representatives and the Senate.

This section became effective July 1, 2009. (HP)

Divide Prosecutorial District

S.L. 2009-451, Sec. 15.17E (SB 202, Sec. 15.17E) divides Prosecutorial District 11, consisting of Harnett, Johnston, and Lee Counties, into two districts:

- Prosecutorial District 11A consisting of Harnett and Lee Counties.
- Prosecutorial District 11B consisting of Johnston County.

The district attorney position for District 11B will be filled by the district attorney serving the previous District 11 who resides in Johnston County. The Governor will appoint the district attorney for District 11A who will serve the remainder of the term expiring January 1, 2013. A district attorney will be elected in 2012 for a four-year term commencing January 1, 2013.

This section becomes effective January 15, 2011, or the date of preclearance under Section 5 of the Voting Rights Act of 1965, whichever is later. (TH)

Mandatory Appointment Fee in Criminal Cases/Report on Indigent Appointment Fees

S.L. 2009-451, Sec. 15.17I (SB 202, Sec. 15.17I) provides that the $50 fee for appointment of counsel in a criminal case is mandatory and may not be remitted or revoked by the court. The Administrative Office of the Courts must monitor the collection and recoupment of indigent appointment fees for each office of the clerk of superior court and report its findings quarterly to the Joint Legislative Commission on Governmental Operations.

This section became effective July 1, 2009. (TH)

Use of Seized and Forfeited Property Transferred to State Law Enforcement Agencies by the Federal Government

S.L. 2009-451, Sec. 16.2 (SB 202, Sec. 16.2) provides that assets transferred during the 2009-2011 fiscal biennium to the Departments of Justice, Corrections, and Crime Control and Public Safety pursuant to federal law are to be credited to the respective departments' budgets. The act directs the departments to report to the Joint Legislative Commission on Governmental Operation upon receipt of the assets, and, before use, report on the intended use of the assets and departmental priorities relating to their use.

The act prohibits the departments from using these assets for certain purposes that would result in the State incurring additional expenses in the future, unless prior approval is granted by the General Assembly. The act specifically allows State law enforcement agencies to receive funds from the United States Department of Justice, Department of the Treasury, and Department of Health and Human Services.

This section became effective July 1, 2009. (BP)

Certain Litigation Expenses to be Paid by Clients

S.L. 2009-451, Sec. 16.3 (SB 202, Sec. 16.3) provides that client departments, agencies, and boards must reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to the litigation in which the Department of Justice is representing the department, agency, or board.

This section became effective July 1, 2009. (JH)

State Capitol Police Transfer

S.L. 2009-451, Sec. 17.3 (SB 202, Sec. 17.3) transfers the State Capitol Police to the Department of Crime Control and Public Safety. The special police officers of the State Capitol Police have the same power of arrest and jurisdiction as a City of Raleigh police officer. The authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State in Wake County.

This section became effective July 1, 2009. (EC)

Increase Charitable Bingo Licensing Fee

S.L. 2009-451, Sec. 17.6 (SB 202, Sec. 17.6) increases the annual application fee for a bingo license. North Carolina law allows for charitable and nonprofit organizations to conduct bingo games with a license issued by the Department of Crime Control and Public Safety. The license is renewable yearly with the payment of an annual application fee. This section increases the fee from $100 to $200.

This section became effective September 1, 2009. (WGR)

Establish Youth Accountability Planning Task Force

S.L. 2009-451, Sec. 18.9 (SB 202, Sec. 18.9) establishes the 21-member Youth Accountability Planning Task Force within the Department of Juvenile Justice and Delinquency Prevention. The Task Force must:

- Determine whether the State should amend the laws concerning persons 16 and 17 years of age who commit crimes or infractions, including a determination of whether the Juvenile Code or the Criminal Procedure Act should be revised to provide appropriate sanctions, services, and treatment for those offenders.
- Study the feasibility of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions.
- Submit an interim report to the 2010 Regular Session of the 2009 General Assembly and must submit a final report of its findings and recommendations by January 15, 2011.

This section became effective July 1, 2009. (KQ)

Reimburse Counties for Housing and Extraordinary Medical Costs for Inmates, Parolees, and Post-Release Supervisees Awaiting Transfer to State Prison System

S.L. 2009-451, Sec. 19.3 (SB 202, Sec. 19.3) authorizes the Department of Correction to use funds available to the Department for the 2009-2011 biennium to pay $40 per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system. The Department must report quarterly to the Joint Legislative Commission on Governmental Operations; the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

This section became effective July 1, 2009. (KQ)

Report on Probation and Parole Caseloads

S.L. 2009-451, Sec. 19.12 (SB 202, Sec. 19.12) directs the Department of Correction to study caseload averages for probation and parole officers and report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

The Department of Correction must report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2011.

In addition, the Department of Correction is directed to report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

- The number of sex offenders enrolled on active and passive GPS monitoring.
- The caseloads of probation officers assigned to GPS monitored sex offenders.
- The number of violations.
- The number of absconders.
- The projected number of offenders to be enrolled by the end of the 2009-2010 fiscal year and the end of the 2010-2011 fiscal year.
- The total cost of the program, including a per offender cost.

This section became effective July 1, 2009. (KQ)

Justice Reinvestment Project

S.L. 2009-451, Sec. 19.22 (SB 202, Sec. 19.22) authorizes the Department of Correction to use up to $100,000 in nonrecurring funds to secure technical assistance from the Council of State Governments to participate in the national Justice Reinvestment Project. The technical assistance will support the work of the Justice Reinvestment Project to develop policies and recommendations to reduce prison overcrowding and to manage the offender population.

This section became effective July 1, 2009. (KQ)

Repeal Jailed Misdemeanant Payments

S.L. 2009-451, Sec. 19.22A (SB 202, Sec. 19.22A) repealed G.S. 148 32.1(a), which required the Department of Correction to pay each local confinement facility a standard sum for each inmate serving a sentence of 30 days or more at the local facility.

This section became effective July 1, 2009. (KQ)

Community Work Crew Fee

S.L. 2009-451, Sec. 19.24 (SB 202, Sec. 19.24) authorizes the Department of Correction to charge a fee to any unit of local government to which it provides, upon request, a community work crew. The amount of the fee must be no more than the cost to the Department to provide the crew to the unit of local government, not to exceed a daily rate of $150 per work crew.

This section became effective July 1, 2009. (KQ)

Increase Fee for Community Service Work Program

S.L. 2009-451, Sec. 19.26 (SB 202, Sec. 19.26) increases the fee for participation in the Community Service Parole Program from $200 to $225. It also increases the fee for persons serving a community service sentence from $200 to $225.

This section became effective September 1, 2009. (KQ)

Supervision of Certain Defendants

S.L. 2009-452 (SB 851) provides that, with the agreement of the chief district court judge and the senior resident superior court judge, a district court may be given jurisdiction to: (i) preside over the supervision of a probation judgment that requires a defendant convicted in superior court to participate in drug treatment or therapeutic court programs as a special condition of probation, or to participate in drug treatment court as part of a deferred prosecution agreement; and (ii) conduct probation revocation proceedings.

The act defines a therapeutic court as one in which a defendant, as a condition of probation or as part of a deferred prosecution agreement, is ordered to participate in specified activities designed to address underlying problems of substance abuse and mental illness that contribute to the defendant's criminal activity. A therapeutic court may be established when the senior resident superior court judge and chief district court judge agree in writing to establish the court and file the agreement with the Administrative Office of the Courts.

This act became effective October 1, 2009. (BP)

North Carolina Racial Justice Act

S.L. 2009-464 (SB 461) provides a procedure for a defendant who has been charged with a capital offense, or a defendant who has been sentenced to death, to demonstrate that the sentence of death was sought or imposed on the basis of race. The act allows a finding that race was the basis of the decision to seek or impose a death sentence based on evidence that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The defendant may use statistical evidence or other evidence, including sworn testimony of members of the criminal justice system, to show that one or more of the following applies:

- Death sentences were sought or imposed significantly more frequently upon defendants of one race than upon defendants of another race.
- Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment for capital offenses against a person of another race.
- Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

The defendant has the burden of proving that race was a significant factor in the decision to seek or impose the death penalty and the State may offer rebuttal evidence, including statistics. The court may consider evidence of any impact on the defendant's trial of any programs in place to eliminate race as a factor. Juror testimony must comply with evidentiary rules on admissibility.

Claims may be made either pretrial or postconviction. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life

imprisonment without the possibility of parole. This act is retroactive, and provides that capital defendants have up to one year from the effective date of the act to file a claim.

This act became effective August 11, 2009. (SS)

Comply with Melendez-Diaz Decision

S.L. 2009-473 (SB 252) amends several statutes in response to the recent United States Supreme Court case of *Melendez-Diaz v. Massachusetts,* 559 U.S. ____ (June 25, 2009). The Court ruled that forensic lab reports were testimonial in nature and subject to the Sixth Amendment Confrontation Clause of the U.S. Constitution. Forensic lab reports include those identifying a substance as a controlled substance and the analysis of breath, blood, or urine in a DWI case. The Court held that a defendant had the right to confront [cross-examine] the person who prepared the report.

The Supreme Court held that a "notice and demand" statute satisfied the constitutional requirement that a defendant be allowed to "confront" any adverse witnesses. A notice and demand statute provides that the State must notify the defendant that a forensic report will be offered into evidence, and give the defendant an opportunity to object to its admission. If an objection is made, then the report is treated like any other evidence and the analyst who prepared the report must appear and testify in court in order for the report to be admitted.

SB 252 amends existing "notice and demand" statutes and provides for the procedure in other statutes as follows:

- Adds the procedure in G.S. 8-58.20 for the chain of custody for forensic evidence; the statute had an existing procedure for notification of use of an analyst's report with an opportunity for the defendant to object.
- Amends the law in implied-consent cases to require notice to the defendant at least 15 business days prior to the proceeding that the results of a chemical analysis of blood or urine [and chain of custody document] will be used in a proceeding against the defendant. The defendant must object to the admission at least 5 business days before the proceeding, or the results are admissible without an appearance by the analyst. Upon objection, the admissibility of the report is governed by the rules of evidence, i.e., the in-court testimony of the chemical analyst would be required. The requirement to provide notice does not apply to administrative hearings. Each party maintains its right to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.
- Amends the law in implied-consent cases in District Court that allows the admission of an affidavit by a chemical analyst without authentication. The affidavit contains information on alcohol concentration or concentrations or the presence or absence of an impairing substance. The amendment clarifies that the affidavit is admissible in any hearing or trial in the District Court division without testimony by the analyst – subject to the notice and demand procedure above.
- Clarifies the existing notice and demand procedure for controlled substance cases under Chapter 90. It changes calendar days to "business" days for the calculations required under the notice and demand procedure.

This act became effective October 1, 2009, and applies to offenses committed on or after that date. Nothing in this act shall be construed to abrogate any judicial or administrative rulings or decisions prior to the effective date of this act that (i) allowed or disallowed the introduction of evidence or (ii) validated or invalidated procedures used for the introduction of evidence. (HP)

Expunctions/Purge Online Databases

S.L. 2009-510 (SB 262) requires clerks of superior court to provide notice of court-ordered expunctions to the Administrative Office of the Courts (AOC), State and local agencies,

the State Bureau of Investigation (SBI) and Federal Bureau of Investigation (FBI), and private entities. The act requires State and local agencies and private entities to expunge convictions from records as a result of the court-ordered expunction. Other agencies that keep records of convictions, such as the Division of Motor Vehicles and the Department of Correction, must expunge the records upon notice. The act also creates a cause of action against private entities who disseminate information required to be expunged.

AOC is required to maintain a confidential file of the names of persons granted expunctions, which may be disclosed only to a judge in determining future discharges or expunctions, a person requesting confirmation of that person's own discharge or expunction, or in response to a subpoena or other court order issued pursuant to a civil action for liability of dissemination of expunged criminal history information.

State agencies that receive an expunction order must notify any private entity with which the agency has a licensing agreement for bulk extracts of data from the agency criminal record database to delete that record. The private entity must notify any other entity to which it sells any compilation of the information to delete the record in question. A private entity has a duty to destroy and not disseminate any information which the entity has received notice to delete. Unless regulated by the federal Fair Credit Reporting Act or Gramm-Leach-Bliley Act, a private entity licensed to access a State agency criminal history record database may disseminate information within 90 days after receiving the information, and must notify the State agency from which it receives information of any other entity to which it sells any compilation of the information.

A private entity that disseminates information in violation of the act is liable for any resulting damages sustained by the person who is the subject of the information. A person prevailing in the action is entitled to court costs and reasonable attorneys' fees. Private entities subject to civil liability remedies of the federal Fair Credit Reporting Act or Gramm-Leach-Bliley Act are not subject to civil liability under this act. Prior to filing an action, a person who is the subject of an expunged record may apply to AOC for a certificate verifying that the person is the subject of the expunged record and proper notice of the expunction was made.

This act becomes effective October 1, 2010. (KM)

Magistrate Can Carry Gun in Courthouse

S.L. 2009-513 (HB 473) authorizes magistrates to carry concealed weapons in a courthouse, other than a courtroom where a district or superior court judge is presiding, under the following conditions:

- The magistrate is in the building to discharge the magistrate's official duties.
- The magistrate has a valid concealed handgun permit.
- The magistrate has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina.
- The magistrate secures the weapon in a locked compartment when the weapon is not on the magistrate's person.

This act became effective August 7, 2009. (EC)

Alternative Testimony/Children and Adults with Disabilities

S.L. 2009-514 (HB 775) creates a new rule of evidence (Rule 616), and adds a new law in the criminal procedure statutes (15A-1225.2). The act authorizes the court to permit remote testimony in any civil or criminal action when the witness is a person with a developmental disability, or a person with mental retardation. Remote testimony allows a witness to testify outside the presence of the defendant. The defendant is able to observe and view the testimony, and has continuing communication with counsel, who is in the room with the witness.

Criminal Actions. – Remote testimony would be permitted in criminal actions only if the court finds, based on clear and convincing evidence, that (i) the ability of the witness to communicate with the trier-of-fact would be impaired, and (ii) the witness would suffer serious emotional distress from testifying in the presence of the defendant.

Civil Actions. – Remote testimony would be permitted in civil actions if the court determines by clear and convincing evidence that (i) the ability of the witness to communicate with the trier-of-fact would be impaired, and (ii) the witness would suffer serious emotional distress from testifying in the presence of a named party or parties, or from testifying in an open forum.

This act became effective December 1, 2009, and applies to hearings and trials held on or after that date. (HP)

Administrative Office of the Courts Omnibus Courts Act

S.L. 2009-516 (HB 1269) makes various changes to provisions related to the Administrative Office of the Courts. The changes are as follows:

- Removes the requirement for approval by the Administrative Office of the Courts for use of excess funds from the imposition of court costs by local judicial districts.
- Removes the Judicial Branch from the general auditing provisions applying to State agencies, and authorizes the Director of the Administrative Office of the Courts to establish and staff as necessary an Internal Audit Division of the Judicial Department and the Administrative Office of the Courts.
- Clarifies jurisdiction for probation supervision and revocation in drug treatment courts. The superior court has exclusive jurisdiction over all hearings to revoke probation where the district court is supervising a drug treatment court probation judgment. The district court has jurisdiction to conduct the probation revocation if the chief district court judge and senior resident superior court judge agree that such conduct is in the interest of justice. If the district court conducts the hearing and revokes probation, appeal is to the appellate division**.** With the consent of the chief district court judge and senior resident superior court judge, the district court has jurisdiction to preside over supervision of probation judgments entered in superior court where the defendant was required to participate in a drug treatment court program. The district court may modify or extend the probation judgment, but probation revocation must be conducted as prescribed. Effective December 1, 2009.
- Authorizes judicial officials to cancel or postpone court sessions and close court offices due to catastrophic conditions. The Chief Justice of the Supreme Court is authorized to issue emergency directives necessary to ensure continuing operation of essential trial or appellate court functions, including designation of judicial officials to act on matters stated in the order and designation of counties and locations for matters to be heard, in response to existing or impending catastrophic conditions or their consequences. Such orders expire the sooner of a date stated in the order or 30 days from issuance of the order, but may be extended for additional 30 day periods as needed.

Except as noted, this act became effective August 7, 2009. (EC)

Juror Qualifications/Electronic Juror List

S.L. 2009-518 (SB 293) allows the Register of Deeds to maintain the juror list in an electronic format.

This act became effective August 26, 2009. (TH)

Prevent Racial Profiling

S.L. 2009-544 (SB 464) amends the law requiring the collection of traffic law enforcement statistics and provides for the care of minor children who are present at the arrest of certain adults.

Law enforcement agencies must assign each officer making traffic enforcement stops an anonymous identifying number, and make the anonymous identifying numbers a matter of public record. The correlation between the identifying numbers and the officers' real names is not public record and shall not be disclosed. Any agency subject to the reporting requirements must submit the collected information to the Division of Criminal Statistics within 60 days of the close of each month. An agency that does not submit the information on time shall be ineligible to receive any law enforcement grants available by or through the State until such time that information which is reasonably available is submitted.

The act also requires a law enforcement officer who arrests an adult who is supervising minor children who are present at the time of the arrest, to place the minor children with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable amount of time, the law enforcement officer must contact the county department of social services.

This act became effective January 1, 2010. (SS)

Access to Juvenile Records/Violent Offenders

S.L. 2009-545 (SB 984) amends the Juvenile Code regarding access to and use of juvenile court records when the individual is later charged as an adult in a criminal proceeding.

- The act authorizes prosecutors to share information obtained from a defendant's juvenile record with magistrates and law enforcement officers. The record may not be photocopied.
- The act provides that those persons allowed access to a juvenile's record may, under certain circumstances, use the juvenile's record of adjudication of delinquency for pretrial release decisions, plea negotiations, and plea acceptance. This provision applies to defendants who have been charged with a Class A1 misdemeanor or a felony, and were less than 21 years old at the time of the charged offense. The defendant's juvenile record of adjudication of delinquency may be used as described above if the adjudication (i) was for an offense that would have been a Class A1 misdemeanor or felony if committed by an adult, and (ii) the adjudication happened 18 months or less before the defendant turned 16 or later. Information obtained regarding a juvenile record shall remain confidential and shall not be placed in any public record.

The act makes additional changes to the Juvenile Code by:

- Changing the definition of "prosecutor" to include the district attorney and any assistant district attorney.
- Adding the juvenile's attorney to the list of people who may obtain law enforcement records pertaining to the juvenile.
- Requiring the court to issue a written order of adjudication including the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication.

This act became effective December 1, 2009. The provisions relating to use of a juvenile record apply to offenses committed on or after that date. The provisions requiring a written order of adjudication apply to adjudications of delinquency entered on or after that date. (SS)

Firearms Qualify Sites/Expand Commission Powers

S.L. 2009-546 (SB 978) revises the powers of the North Carolina Criminal Justice Education and Training Standards Commission and directs the Commission to coordinate with local and state law enforcement officers, and with the community college system, to provide multiple firearms qualification sites for certification to carry a concealed handgun.

In 2007, the General Assembly enacted legislation which waived the requirement to obtain a concealed handgun permit for certain persons authorized by federal law to carry concealed handguns, if they are in compliance with federal law, and for certain retired federal and state law enforcement officers.

This act requires the Commission to coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where qualified law enforcement officers may satisfy the firearms qualification criteria required for certification.

The act also expands the authority of the Commission to allow suspension, revocation, or denial of certification, pursuant to standards, for:

- Persons qualified under the Chapter to be employed at entry level and retained as criminal justice officers.
- Criminal justice training schools and programs or courses of instruction required by the Chapter.
- Criminal justice instructors and school directors who participate in programs or courses of instruction required by the Chapter.
- Operators and instructors for training programs for approved electronic speed-measuring instruments.

The act prohibits programs or courses by criminal justice training schools, programs, and courses of instruction that the Commission has determined do not comply with the law or rules, unless the Commission waives the deficiency.

This act became effective January 1, 2010. (HP)

Amend House Arrest Laws/Adult/Juvenile

S.L. 2009-547 (SB 726) makes changes concerning the use of house arrest.

The act amends the definition of house arrest in the Juvenile Code to provide the court or juvenile court counselor may authorize the juvenile to leave the house for school, counseling, work, or other similar specific purposes, provided the juvenile is accompanied in transit by a parent, legal guardian, or other person approved by the juvenile court counselor.

The act authorizes the use of house arrest as a condition of pretrial release. A secured appearance bond is required if house arrest is imposed as a condition of pretrial release. House arrest is authorized for pretrial release when the judicial official finds that the defendant poses a danger of injury to any person or may destroy evidence, suborn perjury, or intimidate a potential witness.

The act also amends the statutes relating to the use of house arrest as a condition of probation to provide that the court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (SS)

Referrals to Departments, Agencies, Etc.

Collection and Publication of Statistics on the Use of Deadly Force by Law Enforcement Officers

S.L. 2009-106 (HB 266) directs the Division of Criminal Statistics to collect, maintain, and annually publish the number of deaths resulting from the use of deadly force by State and local law enforcement officers in the course and scope of their official duties.

This act became effective January 1, 2010, and applies to deaths from incidents occurring on or after that date. (BC)

Videoconference Technology in Court Proceedings

S.L. 2009-270 (HB 1438) directs the Administrative Office of the Courts, in consultation with the Department of Correction, to conduct a pilot program to test the feasibility of using videoconference or similar technology to conduct court proceedings involving defendants in the custody of the Department of Correction, instead of requiring live appearances in court for those defendants. The Administrative Office of the Courts will designate two counties to participate in the pilot, and the Department of Correction will designate one prison facility. The Administrative Office of the Courts also is authorized to designate one or more counties to participate in a pilot program involving persons in the custody of local confinement facilities. The act specifies the manner in which courts may participate in the pilot program, and the type of proceedings in which the videoconferencing may be used. The equipment used in conducting the videoconference proceedings must be used in a manner that ensures the judicial official conducting the proceeding and the defendant can see and hear each other and that ensures the defendant and the defendant's attorney may communicate in a manner that preserves the defendant's right to confidential communication with counsel.

The act directs the North Carolina Rural Courts Commission, in cooperation with the Department of Correction, to study the effectiveness of the use of videoconferencing in court proceedings involving inmates, and to report its findings and recommendations by May 1, 2010, to the Chief Justice, the Secretary of Correction, and Appropriations Committees of the General Assembly.

This act became effective July 10, 2009. (BC)

Report on Business Courts

S.L. 2009-451, Sec. 15.4 (SB 202, Sec. 15.4) requires the Administrative Office of the Courts to report on the activities of each North Carolina Business Court site. The report must include the number of new, closed, and pending cases; the average age of pending cases; and the annual expenditures for the prior fiscal year. The report must be submitted by March 1 of each year to the Chairs of the Appropriations Committees, and the Chairs of the Appropriations Subcommittees on Justice and Public Safety, of the House of Representatives and the Senate.

This section became effective July 1, 2009. (HP)

North Carolina Legal Education Assistance Foundation Report on Funds Disbursed

S.L. 2009-451, Sec. 16.4 (SB 202, Sec. 16.4) requires the North Carolina Legal Education Assistance Foundation to report by March 1 of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate

Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds, the purpose of the expenditures, and other information related to assisting with legal education.

This section became effective July 1, 2009. (JH)

Reports on Certain Juvenile Programs

S.L. 2009-451, Sec. 18.2 (SB 202, Sec. 18.2) requires certain juvenile justice and delinquency programs to report on their effectiveness. Project Challenge North Carolina, Inc. is a juvenile community service and restitution program for adjudicated youth. This section requires the program to report to the Department of Juvenile Justice and Delinquency Prevention and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 of each year on the operation and effectiveness of the program. The report must include:

- The source of referrals for juveniles.
- The types of offenses committed by juveniles in the program.
- The amount of time juveniles are in the program.
- The number of juveniles who successfully complete the program.
- The recidivism rate following completion of the program.
- The program's budget and expenditures.

This section also requires the Juvenile Assessment Center to report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1 of each year on the effectiveness of the Center. The report must include information on the number of juveniles served, the services provided as a result of assessment plans, and the Center's budget and expenditures.

This section became effective July 1, 2009. (WGR)

Establishment of a Gang Prevention and Intervention Pilot Program

S.L. 2009-451, Sec. 18.5 (SB 202, Sec. 18.5) requires the Department of Juvenile Justice and Delinquency Prevention (Department), as part of the Governor's Comprehensive Gang Initiative, to establish a two-year Gang Prevention and Intervention Pilot Program (Pilot). The Pilot will focus on youth at risk for gang activity and those already associated with gangs and gang activity. The Department must:

- Ensure that measurable performance indicators and systems are put in place to evaluate the effectiveness of the Pilot.
- Conduct both process- and outcome-focused evaluations of the Pilot to determine community and instructional impacts of the Pilot pertaining to gang behavior, desistance, and activities.

The Department must report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee on the implementation and continuing operation of the Pilot by April 1 each year. The report must include information on the number of juveniles served and an evaluation of the Pilot's effectiveness, including the measurable performance indicators and systems and process- and outcome-focused evaluations.

This section became effective July 1, 2009. (KM)

Juvenile Crime Prevention Council (JCPC) Grant Reporting and Certification

S.L. 2009-451, Sec. 18.7 (SB 202, Sec. 18.7) requires the Department of Juvenile Justice and Delinquency Prevention (Department) to report to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives annually by October 1 a list of recipients of grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council (JCPC) grants. The report must include the following:

- Amount of the grant awarded.
- Membership of the local committee or council administering the award funds on the local level.
- Type of program funded.
- Short description of the local services, program, or projects that will receive funds.
- Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.
- Number of at-risk, diverted, and adjudicated juveniles served by each county.
- The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum Department-adopted standards.
- Total cost for each funded program, including cost per juvenile and essential elements of the program.

A written copy of the list and other information about the projects must be sent to the Fiscal Research Division of the General Assembly.

This section became effective July 1, 2009. (KM)

Studies

Pre-Sentence Investigations Feasibility Study

S.L. 2009-451, Sec. 19.14 (SB 202, Sec. 19.14) directs the Department of Correction and the Administrative Office of the Courts to study the feasibility of conducting pre-sentence investigations on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. The Department of Correction and the Administrative Office of the Courts are directed to report the results of the study by May 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

This section became effective July 1, 2009. (KQ)

Study Incarcerated Mothers Program

S.L. 2009-451, Sec. 19.15 (SB 202, Sec. 19.15) directs Our Children's Place, Inc., a nonprofit corporation, to submit to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2009, a comprehensive plan for the implementation of a contractual program to house incarcerated women with their children. The plan must include criteria for placement, minimum standards for custody and security, and projections of costs for implementation, including presumptive funding sources and memoranda of intent from affected agencies.

The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee is directed to make recommendations to the 2010 Session of the 2009 General

Assembly concerning the establishment of a program to house incarcerated women with their children and addressing legal issues.

This section became effective July 1, 2009. (KQ)

Major Pending Legislation

Sex Offender Registry Changes

HB 1317 would make several changes to laws relating to sex offenders residing in the State:

- *Residency and Temporary Residency Reporting.* – The act would modify registration requirements to require reporting of both mailing and residential addresses, require in-person reporting of temporary residences, and create penalties for failure to report temporary residences.
- *Premises Restrictions*. – The act would add additional locations to the list of protected properties where certain sex offenders are not allowed to be present, prohibit nonresidents required to register in other states from access to those protected properties, and clarify provisions as to emergency access to those properties.
- Specific locations at which the covered sex offenders would be prohibited include the premises of:
  - Any institution of higher learning.
  - Any gymnasium or fitness facility that allows minors to use the facility.
  - Any county or State fair while the fair is being held.
  - A public library while activities or programs that are primarily intended for minors are being conducted, even though the activities or programs may be limited to a specific area of a library.
  - A movie theatre that is showing a "G" or "PG" rated movie.
  - Any location that is a school bus stop while the place is being used for a school bus stop.
- The bill deletes a provision that requires covered registered sex offenders to remain at least 300 feet from areas primarily used for the use, care, or supervision of minors, when those areas are located on property used for other purposes. For example, a registered sex offender who is covered under the law would be allowed to enter a McDonald's restaurant that included a children's playground on the site, so long as he or she does not physically enter into the playground area, i.e., the current requirement to remain at least 300 feet from the area would be eliminated.
- The bill adds new restrictions for covered sex offenders, relating to attendance at worship services. The bill provides that a covered sex offender may attend worship services and participate in religious activities primarily intended for adults, that occur within a facility intended primarily as a religious center, subject to the following conditions:
  - The sex offender has received either (i) written permission from the senior religious leader, or governing board, or (ii) the senior religious leader or governing board has granted ongoing permission for regular visits of a routine nature.
  - The entity granting permission shall inform other staff as to where the sex offender will be present.

This act's current effective date is December 1, 2009. Generally, acts relating to criminal law and procedure will have an effective date of December 1 in the year in which the law is enacted; consequently, the act's effective date is likely to be amended to December 1, 2010, if the bill is enacted during the 2010 Regular Session. (HP)

Chapter 8
Criminal Law and Procedure

Brenda Carter (BC), Hal Pell (HP), Susan Sitze (SS), Jennifer McGinnis (JLM), Steve Rose (SR), Kara McCraw (KM), Ben Popkin (BP), Drupti Chauhan (DC), Kelly Quick (KQ)

Enacted Legislation

Offense for Portable Toilets/Pumper Trucks

S.L. 2009-37 (HB 616) creates the offense of larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks. It is a Class 1 misdemeanor for any person to steal, take from its temporary location or from any person who has lawful custody, or willfully destroy, deface, or vandalize a chemical or portable toilet or a pumper truck operated by a septage management firm. The penalty applies unless the conduct is covered under another law that provides a greater punishment.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (JLM)

Increase Raffle Prize Limit

S.L. 2009-49 (HB 85) allows any bona fide branch, chapter, or affiliate of a nonprofit organization to conduct raffles on the same basis as the parent organization. Under existing law, nonprofit organizations and associations recognized as such by the Department of Revenue, as well as government entities within the State, may conduct raffles in accordance with certain statutory requirements. The act increases the maximum amounts for cash prizes and for merchandise used as prizes in raffles from $50,000 to $125,000 and authorizes the raffle of real property with an appraised value of up to $500,000.

This act became effective June 1, 2009. (DC)

Stalking Law Conforming Changes

S.L. 2009-58 (SB 617) makes conforming changes to statutes which reference the stalking statute. During the 2008 Session, the State's stalking law was repealed, and replaced with a new stalking statute. This act deletes the references throughout the statutes to the repealed statute, and substitutes the correct statutory reference for the existing stalking statute.

This act became effective May 28, 2009. (HP)

School Board Members/Failure to Discharge Duty

S.L. 2009-107 (HB 43). See **Education**.

Plea Bargain Disclosure

S.L. 2009-179 (HB 315) requires a superior court judge who rejects a plea arrangement disclosed in open court to order that the rejection be noted on the plea transcript and to order that the plea transcript with the notation of the rejection be made a part of the record.

This act became effective December 1, 2009, and applies to pleas accepted on or after that date. (KM)

Preservation of DNA & Biological Evidence

S.L. 2009-203 (HB 1190) makes a number of changes to the law regarding the preservation of DNA and biological evidence related to criminal offenses, and a defendant's access to that evidence. The act amends the definition of "DNA sample" to include not only blood samples but also samples from the cheeks or mouth and any other sample provided by a person convicted of a criminal offense covered by the DNA Database and Databank Act. It also amends the definition of "biological evidence" to include fingerprints and other human biological material which reasonably may be used to incriminate or exculpate any person in the course of a criminal investigation.

The act requires that a criminal defendant have access before trial to a complete inventory of all physical evidence collected in connection with the criminal investigation, and allows certain accredited labs to perform required DNA testing of biological material collected in connection with the criminal case. It requires the State Bureau of Investigation (SBI) to search and upload any profiles obtained from the testing to the FBI's Combined DNA Index System (CODIS), if the biological material is relevant to the investigation or testing is material to the defendant's defense.

The act rewrites the law pertaining to the applicable time periods for the preservation of biological evidence collected in the course of a criminal investigation or prosecution, and requires the agency in possession of the evidence to prepare an inventory of biological evidence relevant to the defendant's case if requested by the defendant. The act requires the SBI to establish minimum guidelines for the retention and preservation of biological evidence in a manner that would prevent contamination or degradation of the evidence and provide a continuous chain of custody with sufficient official documentation to locate the evidence. The guidelines are to be published by January 1, 2010, and distributed by law enforcement agencies and clerks of court to all employees with responsibility for maintaining custody of evidence. The guidelines must be reviewed and updated biennially.

The bill creates a criminal penalty for anyone who knowingly and intentionally destroys, conceals, or tampers with evidence that is required to be preserved, with the intent to impair the integrity of the evidence, prevent DNA testing, or prevent use of the evidence in an official proceeding. Violation is a Class I felony for a noncapital crime; for evidence of a crime of 1st degree murder, violation is a Class H felony.

The act amends the law concerning a defendant's request for postconviction DNA testing, and requires the court to appoint counsel for an indigent defendant appealing an order denying a defendant's motion for DNA testing.

The act creates a Joint Select Study Committee on the Preservation of Biological Evidence to consider issues including agency costs, the effect of emerging technologies, and procedures for the transfer of evidence. The Committee is directed to report to the General Assembly not later than April 1, 2010.

The provisions concerning the Study Committee became effective June 26, 2009. The remainder of this act became effective December 1, 2009. (BC)

Increase Penalty/Remove Serial Number from Gun

S.L. 2009-204 (HB 787) increases the criminal penalty for removing the serial number from a gun or possessing a gun with the serial number removed.

The act creates a Class H felony for:

- Altering, defacing, destroying, or removing the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark from any firearm with the intent to conceal or misrepresent the identity of the firearm.

- Knowingly selling, buying, or possessing any firearm on which the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark has been altered, defaced, destroyed, or removed for the purpose of concealing or misrepresenting the identity of the firearm.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (SS)

Paraphernalia Control Act

S.L. 2009-205 (HB 722) regulates the retail sale of glass tubes and splitters which are known to be used as drug paraphernalia. Glass tubes are hollow glass cylinders that are from two to seven inches in length and one-eighth inch to three-fourths inch in diameter; they may be sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. A splitter is a ring-shaped device that allows the insertion of a wrapped tobacco product, such as a cigar, so that it can be pulled through the device, and that cuts or slices the wrapping of the tobacco product along the product's length as it is drawn through the device.

The retail sale of glass tubes and splitters covered by the act are subject to the following requirements:

- The items must be kept in an area accessible only to store employees.
- A purchaser must present photo identification and information, including name and address, which is then entered into a log or record.
- The customer must sign a statement verifying that the item is not being purchased for use as drug paraphernalia. A person who knowingly makes a false statement or representation with respect to the purchase is guilty of a Class 1 misdemeanor.
- The retailer's record must be available to law enforcement personnel within 48 hours of the transaction, and must be kept for two years. The retailer must train its employees on the requirements of the act. A retailer or employee who willfully and knowingly violates the sales provisions of the act is guilty of a Class 2 misdemeanor.

A retailer or employee who reports alleged criminal activity related to the sale of the items, or who refuses to sell an item because of a reasonable belief that it will be used as drug paraphernalia, is immune from civil liability, except where there is willful misconduct. The act also prohibits discrimination or retaliatory action against an employee who in good faith complies with the act.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (HP)

Amend Liability of Social Networking Sites

S.L. 2009-272 (HB 1267) rewrites the law concerning the civil liability of a commercial social networking site with regard to the use of its services by a sex offender. The act provides that a commercial social networking site will not be held civilly liable for damages arising out of a person's communications on its system or network, whether or not that person is a registered sex offender, if that commercial social networking site:

- Complies with G.S. 14-208.15A (voluntarily prescreening users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide sex offender registry and reporting violations); or
- Makes other reasonable efforts to prevent a registered sex offender from using its service.

This act became effective May 1, 2009. (DC)

Targeted Picketing

S.L. 2009-300 (HB 885) makes it unlawful to engage in the targeted picketing of a residence in a manner that would cause fear or substantial emotional distress. "Targeted picketing" means picketing, with or without signs, that is specifically directed toward a residence, or one or more occupants of the residence, and that takes place on that portion of a sidewalk or street in front of the residence, in front of an adjoining residence, or on either side of the residence. The bill specifically provides that general picketing that proceeds through residential neighborhoods or past residences is not prohibited.

Targeted picketing is a Class 2 misdemeanor. A person aggrieved by targeted picketing may seek injunctive relief to prevent further or future violations. A violation of such an injunction would constitute criminal contempt, punishable by a minimum of 30 days to a maximum of one year of confinement.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (HP)

Renew Concealed Carry Permit / 30 Day Limit

S.L. 2009-307 (HB 1132) amends the law concerning renewal of a concealed handgun permit. At least 45 days prior to expiration of a permit, the sheriff of the county where the permit was issued must notify the holder of the permit about requirements for renewal.

The holder of a permit may apply for renewal at any time within the 90-day period prior to its expiration date. If the permittee applies for renewal, and the person remains qualified to have a permit, the sheriff will renew the permit. If a person applies for renewal of a permit prior to its expiration date, the permit will remain until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff. If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the expiration date of the permit is not extended, but the sheriff may waive the requirement of taking another firearms safety and training course.

The act also provides that a former sworn law enforcement officer who has 20 or more aggregate years of part-time or auxiliary law enforcement service may be exempt from the firearms safety and training course requirement for a concealed handgun permit if he or she was a qualified sworn law enforcement officer immediately before retiring and has been retired as a sworn law enforcement officer two years or less from the date of the permit application.

This act became effective January 1, 2010, and applies to permit applications and renewal applications submitted on or after that date. (BC)

Amend Computer Solicitation of Child

S.L. 2009-336 (SB 65) broadens the current law regarding solicitation of a child by computer to commit an unlawful sex act to also prohibit solicitation by any other device capable of electronic data storage or transmission. The act requires as an element of the crime that the child solicited be at least five years younger than the defendant, or that the defendant believes the person to be at least five years younger than the defendant.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (KM)

Regulate Ownership and Use of Certain Reptiles

S.L. 2009-344 (SB 307) expands and clarifies the existing laws regulating the possession of venomous reptiles. The act:

- Adds large constricting snakes and all crocodilians (except the American alligator).
- Provides negligent exposure of others to regulated reptiles constitutes a violation.
- Prohibits the transport of regulated reptiles except in compliance with the law.
- Provides additional requirements for caging and associated protocols for venomous reptiles, large constricting snakes, and crocodilians. Immediate notification of escape to law enforcement would be required in all cases.
- Prohibits handling of a regulated reptile in any manner that intentionally or negligently exposes another to unsafe contact with the reptile, or inducement of another to unsafe contact with the reptile.
- Changes the standard under which law enforcement may seize a regulated reptile from "reasonable grounds" to "probable cause."
- Provides that law enforcement officers seizing a reptile must deliver: (i) A reptile believed to be venomous to the State Museum of Natural Sciences; and, (ii) a reptile believed to be a large constricting snake or crocodilian to the Zoo for determination as to whether the reptile is one regulated by the Article. If the Museum or Zoo determines it is a covered reptile, the entity must determine the final disposition of the reptile, and law enforcement must arrest the person deemed to be in violation of the law. If the Museum or Zoo determines the reptile is not regulated under the Article, and either no criminal warrants or indictments are initiated in connection with the reptile within ten days of seizure or a court determines that the reptile is not being handled in violation of the Article, the reptile must be returned to the person from whom it was seized.
- Adds veterinarians, zoos, serpentariums, and Wildlife Damage Control Agents to the list of entities exempt from the Article's provisions.
- Provides additional penalties/remedies: (i) The owner of a regulated animal is guilty of a Class A1 misdemeanor if another person (other than the owner, the owner's agent, employee, or member of the owner's immediate family) suffers a life-threatening injury or is killed as a result of a violation of the Article. This provision is not applicable to violations that result from incidents that could not have been prevented or avoided by the owner's exercise of due care or foresight, such as natural disasters or other acts of God, or in the case of theft of the reptile from the owner. (ii) A person is guilty of a Class A1 misdemeanor for the intentional release of a nonnative regulated reptile into the wild. (iii) In cases where violations of the Article result in a life-threatening injury or death, or in the case of an intentional release into the wild, the violation is deemed to constitute wanton conduct and the violator is subject to punitive damages in any civil case filed as a result.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (BR)

Real Estate/Settlement Agent Embezzlement

S.L. 2009-348 (SB 764) amends G.S. 14-90, the State's embezzlement law, and Chapter 45A of the General Statutes, the Good Funds Settlement Act (GFSA), to clarify that a settlement agent is guilty of embezzlement in instances where it cannot be shown that the funds were embezzled from a specific party. Under the embezzlement statute, a person is guilty of an offense if that person fraudulently, or knowingly and willfully, uses the property of any person for a purpose other than that for which the defendant received the property and held it under his or her care. Punishment is a Class C felony if the value of the property is $100,000 or more, and a Class H felony if the value of the property is below $100,000. The act amends the embezzlement law to provide that:

- A "settlement agent," as defined in the GFSA, is a person subject to the law, and
- Embezzled funds may belong to any person or be "closing funds" as defined in the GFSA.

The act also amends the GFSA, providing that:

- A settlement agent is a fiduciary, and has the obligation to account for and disburse closing funds.
- Except for such portion of the closing funds that are the settlement agent's fees and expenses, a settlement agent is subject to the State's embezzlement law.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (HP)

Free Medical Exam-Victims of Rape/Sex Offenses

S.L. 2009-354 (HB 1342). See **Health and Human Services**.

Habitual DWI-Reinstatement Petition/10 Yrs

S.L. 2009-369 (HB 1185). See **Transportation**.

Probation Reform

S.L. 2009-372 (SB 920). See **Courts, Justice, and Corrections**.

Larceny of a Motor Vehicle Part

S.L. 2009-379 (HB 1256) creates a Class I felony for larceny of a motor vehicle part if the cost of repairing the motor vehicle is $1,000 or more. The cost of repairing a motor vehicle means the cost of any replacement part and any additional costs necessary to install the replacement part in the motor vehicle.

This act became effective December 1, 2009, and applies to offense committed on or after that date. (SS)

Sex Offenders/Permanent No Contact Order

S.L. 2009-380 (HB 1255) authorizes the issuance of a permanent no contact order prohibiting contact by a convicted sex offender with the victim of the offense.

The act authorizes a judge, when sentencing a defendant convicted of a sex offense, and at the request of the district attorney, to determine whether to issue a permanent no contact order prohibiting any contact by the defendant with the victim of the sex offense. The defendant must show cause why the order should not be issued, and the victim has the right to be heard at the show cause hearing. If the judge determines that reasonable grounds exist for the victim to fear any future contact with the defendant, the judge shall issue the order. The judge shall enter written findings of fact and the ground on which the permanent no contact order is issued. The order shall be incorporated into the judgment imposing the sentence on the defendant for the conviction of the sex offense.

The court may grant relief as specified in the statutes including ordering the defendant not to threaten, visit, assault, molest, or otherwise interfere with the victim. The court may order other relief deemed necessary and appropriate by the court. Law enforcement is directed to enforce the order without further order of the court and to arrest without a warrant if there is probable cause to believe the person has knowingly violated the order. Violation of the order is a Class A1 misdemeanor.

The act provides that at any time after the issuance of the order, the State, at the request of the victim, or the defendant may make a motion to rescind the permanent no contact

order. If the court determines that reasonable grounds for the victim to fear any future contact with the defendant no longer exist, the court may rescind the permanent no contact order.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (SS)

Clarify Domestic Violence Laws/Arrest/Valid Protective Order

S.L. 2009-389 (HB 1464). See **Children and Families**.

Removal of Electronic Monitoring Device

S.L. 2009-415 (SB 713) makes it unlawful to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device, or to request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used to monitor a person who is complying with a home arrest program or wearing the device as a condition of bond or pretrial release, probation, parole, or post-release supervision.

This offense does not apply to persons being monitored by an electronic monitoring device under the provisions of the Sex Offender and Public Protection Registration Programs or to juveniles being monitored by an electronic monitoring device by the juvenile court.

Violation by a person wearing the device as a result of a criminal conviction is an offense one class lower than the most serious underlying offense for which the person was convicted and required to wear the device. Violation by a person wearing the device as a condition of bond or pretrial release is a Class 1 misdemeanor. Violation by any other person is a Class 2 misdemeanor.

This act became effective December 1, 2009, and applies to acts committed on or after that date. (DC)

Strengthen Domestic Violence Protective Orders/Pets

S.L. 2009-425 (SB 1062). See **Children and Families**.

Protect Search and Rescue Animal

S.L. 2009-460 (HB 1098) adds search and rescue animals to the existing law prohibiting assaults on law enforcement or assistance animals and directing defendants to make restitution to the agency or person who cares for the animal. Existing offenses range from a Class 2 misdemeanor for obstructing the animal in performance of its duty, to a Class H felony for willfully killing the animal. The act also adds search and rescue animals to the provision that makes causing serious harm or the death of an animal while it is performing its official duties an aggravating factor for sentencing purposes.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (BP)

Clarify Weight Measurement/Meth Trafficking

S.L. 2009-463 (SB 1091) amends the law pertaining to trafficking in amphetamines and methamphetamines to make it clear that the charge of trafficking is based on the weight of the entire powder or liquid mixture seized rather than the weight of the actual amount of the controlled substance contained within the powder or liquid mixture.

This act became effective September 1, 2009, and applies to offenses committed on or after that date. (JLM)

North Carolina Racial Justice Act

S.L. 2009-464 (SB 461). See **Courts, Justice, and Corrections**.

Sex Offender Can't Drive Bus with Children

S.L. 2009-491 (HB 1117). See **Transportation**.

Sex Offender Registry/Liberties w/Student

S.L. 2009-498 (HB 209) adds G.S. 14-202.4(a), the felony offense of taking indecent liberties with a student, to the list of crimes that require a person to register as a sex offender.

This act became effective December 1, 2009, and applies to all persons convicted of a violation of G.S. 14-202.4 on or after that date, and to all persons released from a penal institution on or after that date. (SS)

Continuous Alcohol Monitoring Systems

S.L. 2009-500 (HB 926). See **Transportation**.

Pyrotechnics Safety Permitting Act

S.L. 2009-507, Secs. 1 & 2 (SB 563, Secs. 1 & 2) revise the existing provisions governing pyrotechnics in North Carolina. Section 1 of the act makes it unlawful for anyone to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use, handle, exhibit, or discharge any pyrotechnics of any description in the State, except in cases where the following criteria are met:

- The exhibition, use, or discharge is at a concert or public display.
- All individuals who exhibit, use, handle, or discharge the pyrotechnics have completed the required training and are under the direct supervision and control of a permitted display operator, who is present and directs all aspects of the pyrotechnics.
- The display operator has written permission from the appropriate board of county commissioners or city council.

Section 2 of the act provides that the county commissioners or city council may not issue a permit unless the display operator provides proof of insurance in the amount of $500,000, or the minimum required under the State Building Code, whichever is greater, and allows the city or county to set a greater insurance requirement if they so choose.

This act becomes effective February 1, 2010, and applies to offenses committed on or after that date. (BP)

Increase Penalty/Timber Theft

S.L. 2009-508 (SB 990) increases the criminal penalty for cutting, injuring, or removing the timber from another person's property. The criminal penalty is now the same as the criminal penalty for G.S. 14-72, Larceny of Property, and has two levels of criminal penalties based on the amount of monetary damages:

- If the damage caused is $1,000 or less, then the offense is a Class 1 misdemeanor.
- If the damage caused is more than $1,000, then the offense is a Class H felony.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (DC)

Motion for Appropriate Relief / New Requirement

S.L. 2009-517 (SB 853) requires attorneys filing motions for appropriate relief in superior court to certify in writing that each of the following has been satisfied:

- There is a sound legal basis for the motion and it is being made in good faith.
- The attorney has notified both the district attorney's office and the attorney who initially represented the defendant of the motion.
- The attorney has reviewed the trial transcript, or made a good faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety.

The act also makes available to counsel representing a defendant in post-conviction proceedings in Superior Court the complete files of:

- The defendant's prior trial or appellate counsel relating to the defendant's case.
- All law enforcement and prosecutorial agencies involved in the investigation of crimes committed or the prosecution of the defendant.

This act became effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date. (BP)

Change Penalty for Misdemeanor Death by Vehicle

S.L. 2009-528 (HB 889) increases the penalty for misdemeanor death by vehicle from a Class 1 misdemeanor to a Class A1 misdemeanor. The full range of sentencing options will now be available to the judge, regardless of the defendant's prior conviction level.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (BC)

Salvia Divinorum Unlawful

S.L. 2009-538 (SB 138) makes it unlawful for a person to knowingly and intentionally manufacture, sell, deliver, or possess Salvia divinorum or salvinorin A. A first or second violation is an infraction, with a fine not less than $25; a third or subsequent violation is a Class 3 misdemeanor. An exception applies for use in medical or pharmacological research at an educational institution, and for use in landscaping.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (BC)

Access to Juvenile Records / Violent Offenders

S.L. 2009-545 (SB 984). See **Courts, Justice, and Corrections**.

Amend House Arrest Laws / Adult / Juvenile

S.L. 2009-547 (SB 726). See **Courts, Justice, and Corrections**.

Notice of Bond Forfeitures

S.L. 2009-550, Sec. 1 (HB 274, Sec. 1) requires that notice by the court of forfeiture of bail bonds be mailed to the defendant and each surety no later than the 30th day after the date on which the defendant failed to appear as required and a call and fail is ordered.

This section became effective August 28, 2009. (KM)

Protect Our Kids/Cyber-Bullying Misdemeanor

S.L. 2009-551 (HB 1261) creates the offense of cyber-bullying, making it unlawful for a person to use a computer or a computer network to do any of the following with the intent to intimidate or torment a minor, or in some cases, the minor's parent or guardian:

- Build a fake profile or Web site.
- Pose as a minor in an Internet chat room, an electronic mail message, or an instant message.
- Follow a minor online or into an Internet chat room.
- Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.
- Post a real or doctored image of a minor on the Internet.
- Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password-protected account or stealing or otherwise accessing passwords.
- Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.

The act also makes it unlawful to use a computer or computer network to do any of the following:

- Plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor.
- Copy and disseminate an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor.
- Register a minor for a pornographic Internet site.
- Without authorization of the minor or the minor's parent or guardian, register a minor for electronic mailing lists or to receive junk electronic messages and instant messages, resulting in intimidation or torment of the minor.

Cyber-bullying is punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the offender is under the age of 18 at the time the offense is committed, the offense is punishable as a Class 2 misdemeanor, subject to deferral and dismissal under specified conditions.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (BC)

Even Out Prior Criminal Record Points

S.L. 2009-555 (SB 489) restructures the prior record level point ranges for felony sentencing by expanding the points in Prior Record Level I, from 0 points to not more than 1 point. The act evens out the remaining point ranges by limiting each range to a span of 4 points in each prior record level, and lowers the minimum number of points assigned for Prior Record Level VI, from 19 points to 18 points.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (KM)

Establish Proportionate Sentence Lengths

S.L. 2009-556 (SB 488) amends the Structured Sentencing Felony Punishment Chart to make the minimum sentence lengths between prior record levels for each class of offense more proportional, by using a set percentage increment of 15% between each prior record level. The act does not change the initial penalty for any offense (Prior Record Level I) or change any penalties for offenses in Classes H and I.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (KM)

No Smoking/Cell Phones on Prison Grounds

S.L. 2009-560 (SB 167) prohibits the use and possession of tobacco products anywhere on the premises of a State correctional facility. Exemptions are provided for use and possession for religious purposes consistent with the policies of the Department of Correction (DOC), and for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

The act also prohibits the possession of a cell phone or other wireless communications device on the premises of a State correctional facility, except as authorized by DOC policy. An exemption is provided for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the cell phone remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

The act makes it a Class 1 misdemeanor for a person to knowingly give or sell tobacco products, or a mobile telephone or other wireless communications device, to an inmate on the premises of a correctional facility or a local confinement facility; or to knowingly give or sell the items to another person for delivery to an inmate. Any inmate found in possession of the prohibited items will be guilty of a Class 1 misdemeanor.

This act becomes effective March 1, 2010, and applies to acts committed on or after that date. (BC)

Consolidate Expunction Statutes

S.L. 2009-577 (HB 1329) makes various changes to the expunction statutes.

The act relocates existing expunction provisions into Article 5 of Chapter 15A as follows:

- G.S. 14-50.30 and portions of G.S. 14-50.29(d) are relocated to G.S. 15A-145.1.
- G.S. 90-96(b), (d), (e), and (f) are relocated to G.S. 15A-145.2.
- G.S. 90-113.14(b), (d), and (e) are relocated to G.S. 15A-145.3.

The act makes several clarifying changes to the language of existing expunction provisions as follows:

- Corrects statutory references to possessing drug paraphernalia.
- Makes clarifying changes in G.S. 90-96(a1) and G.S. 90-113.14(a1) to explicitly provide for the dismissal and discharge of charges under those subsections and the expunction of the discharge and dismissal.
- Clarifies which misdemeanors under the Toxic Vapors Act are eligible for expunction.

The act modifies several expunction statutes that currently allow expunction based on the person's age at the time of conviction, to provide that eligibility for expunction is based on the person's age at the time the offense is committed. Additionally, the act amends G.S. 15A-146(a1) to provide that if a person had a dismissal or finding of not guilty expunged prior to October 1, 2005, and that person has additional dismissals or findings of not guilty that occurred within the same 12-month period of time or were made at the same term of court, that person

may apply to have the additional dismissals or findings of not guilty expunged as the current law allows.

Finally, the act creates a new provision in G.S. 15A-145(d1) authorizing the expunction of a misdemeanor larceny conviction under G.S. 14-72(a) if the person has no felony convictions and the misdemeanor larceny conviction occurred more than 15 years prior to the petition for expunction.

This act became effective December 1, 2009, and applies to petitions for expunctions filed on or after that date. (SS)

Chapter 9
Education

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

Enacted Legislation

Public Schools

State Board of Education / Membership Restrictions

S.L. 2009-2 (SB 198) increases from one to two the maximum number of public school employees paid from State or local funds that can serve as appointive members of the State Board of Education (SBE). The act also removes the prohibition against an employee of the Department of Public Instruction from serving as an appointive member of the SBE. The act exempts employment contracts between the SBE and its chief executive officer from the law that prohibits public officers or employees from benefiting from public contracts.

This act became effective March 4, 2009. (SK)

Clarify Definition of Retirement

S.L. 2009-11 (HB 94). See **Retirement**.

Science Safety in the Public Schools

S.L. 2009-59 (HB 42) requires each local board of education to certify to the State Board of Education (SBE) that its middle school and high school science laboratories are equipped with the appropriate personal protective equipment for students and teachers. This certification must be made before July 1, 2010, and annually thereafter. Each local board also must ensure that its middle schools and high schools comply with all SBE policies related to science laboratory safety.

In consultation with local boards of education and the UNC Board of Governors, the SBE must evaluate and amend, as necessary, the academic requirements for students preparing to become middle and high school science teachers to ensure adequate preparation in science laboratory safety.

Finally, the act prohibits local boards of education from applying for a certificate of occupancy for any new middle or high school building until the plans for the science laboratory areas have been reviewed and approved to meet accepted safety standards for school science laboratories and related preparation rooms and stockrooms. The SBE may do the review and approval of the plans, or it may authorize other entities to do the review and approval of the plans.

This act became effective June 5, 2009. (DC)

No High School Graduation Project Required

S.L. 2009-60 (HB 223) prohibits the State Board of Education from requiring any student to prepare a high school graduation project as a condition of graduation from high school prior to July 1, 2011. However, local boards of education may require their students to complete a high school graduation project.

The Program Evaluation Division of the General Assembly must study the cost and effectiveness of a statewide high school graduation project requirement and report the results of its study to the Joint Legislative Education Oversight Committee on or before July 1, 2010.

This act became effective June 5, 2009. (SI)

Parent and Student Educational Involvement Act

S.L. 2009-61 (HB 218) amends the requirements for written notice to a student's parent, guardian, caregiver, or other person legally responsible for the student when the student has been recommended for expulsion or suspension for more than 10 days. The written notice must specify information regarding the incident that led to the recommendation as well as the hearing and appeals process. The written notice must be provided by the end of the workday during which the suspension or expulsion is recommended when reasonably possible, but in no event later than the end of the following workday.

This act became effective June 5, 2009, and applies beginning with the 2009-2010 school year. (SK)

Schools Notified of Criminal Intelligence Information

S.L. 2009-93 (HB 1327) allows a law enforcement agency to disseminate an assessment of criminal intelligence information to the principal of a public or private school when necessary to avoid imminent danger to the life of a student or employee of the school or to the public school property pursuant to federal regulations.

Federal regulations provide that criminal intelligence information may be disseminated only when there is a need to know and right to know the information in the performance of a law enforcement activity. The criminal intelligence project may disseminate the information only to law enforcement authorities who agree to follow required procedures in maintaining the information.

This act became effective December 1, 2009. (SK)

School Board Members/Failure to Discharge Duty

S.L. 2009-107 (HB 43) adds school board member to the list of public officials who may be found guilty of a Class 1 misdemeanor for willfully omitting, neglecting, or refusing to discharge the duties of the offices they hold. A school board member proved to willfully and corruptly omit, neglect, or refuse to discharge the duties of office, or to violate the oath of office is guilty of misbehavior in office and must be removed from office under the sentence of the court as part of the punishment for the offense.

This act became effective December 1, 2009. (KM)

Building Standards/Pre-K Classes in Public Schools

S.L. 2009-123 (HB 1031) permits a public school that voluntarily applies for a child care facility license to use existing or newly-constructed classrooms for three- and four-year-old preschool students, without building modifications, if the classroom:

- Has at least one toilet and one sink for hand washing.
- Meets kindergarten standards for overhead light fixtures.
- Meets kindergarten standards for floors, walls, and ceilings.
- Has floors, walls, and ceilings free from mold, mildew, and lead hazards.

Public schools must meet all other requirements for child care facility licensure.

Rules adopted by the Child Care Commission regarding a public school that voluntarily applies for a child care facility license must provide that a classroom meeting the standards

established in this act satisfies child care facility licensure requirements as related to the physical classroom.

This act became effective June 19, 2009. (SK)

Local Government Surplus Property Donations

S.L. 2009-141 (HB 96). See **Local Government**.

Reinstatement of Sick Leave / School Employees

S.L. 2009-144 (HB 482) increases the maximum period of separation after which unused sick leave is reinstated by three months, for a total of 63 months, for school personnel who were employed on a 10-month contract at the time of their separation and who return to employment on a 10-month contract.

The maximum period of separation after which unused sick leave is reinstated will remain 60 months for school personnel employed on a 12-month contract.

This act became effective July 1, 2009. (SK)

The Nicolas Adkins School Bus Safety Act

S.L. 2009-147 (HB 440). See **Transportation**.

School Violence Prevention Act

S.L. 2009-212 (SB 526) enacts the School Violence Prevention Act. The act defines bullying and harassing behavior as any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and meet either of the following:

- Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property.
- Creates a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. "Hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior, and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has, or is perceived to have, one or more of these characteristics.

The act requires that no student or school employee be subjected to bullying or harassing behavior by school employees or students, and that no person engage in an act of reprisal against a victim, witness, or person with reliable information about an act of bullying or harassing behavior.

School employees who witness or have reliable information that a student or school employee has been bullied or harassed must report the incident to the appropriate school official. Students or volunteers who witness or have reliable information that a student or school employee has been bullied or harassed should report the incident to the appropriate school official.

The act requires each local school administrative unit (LEA) to adopt a policy prohibiting bullying or harassing behavior before December 31, 2009. The policy must include the following:

- A statement prohibiting bullying or harassing behavior.
- A definition of bullying or harassing behavior no less inclusive than set forth in the School Violence Prevention Article.
- A description of the type of behavior expected of students and school employees.
- Consequences and appropriate remedial action for a person who commits an act of bullying or harassment.
- A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously.
- A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment.
- A statement prohibiting reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequences for a person who engages in reprisal or retaliation.
- A statement of how the policy is to be disseminated and publicized.

An LEA is not prohibited from adopting a policy including components beyond the minimum statutory requirements. Notice of the policy must appear in school publications that set forth rules, procedures, and standards of conduct for schools, and in student and school employee handbooks. Information about the policy must be incorporated into school employee training programs.

Schools also must develop and implement methods and strategies for promoting school environments free of bullying and harassing behavior.

The act must not:

- Be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.
- Prevent a victim from seeking redress under any other available civil or criminal law.
- Be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued.
- Be construed to create any classification, protected class, suspect category, or preference beyond those existing in statute or case law.

This act became effective June 30, 2009, and applies beginning with the 2009-2010 school year. (KM)

Healthy Youth Act

S.L. 2009-213 (HB 88) amends the comprehensive school health education program. It renames the "abstinence until marriage education" program as "reproductive health and safety education," and the general substance of the former abstinence until marriage education program is now included in the provisions of the reproductive health and safety education program.

The act directs each local school administrative unit (LEA) to provide reproductive health and safety education to students beginning in the seventh grade. The instruction of the program must follow existing statutory requirements by:

- Teaching that abstinence from sexual activity outside of marriage is the expected standard for all school-age children.
- Presenting techniques and strategies to deal with peer pressure and offering positive reinforcement.
- Presenting reasons, skills, and strategies for remaining or becoming abstinent from sexual activity.

- Teaching that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, STDs when transmitted through sexual contact, including HIV/AIDS, and other associated health and emotional problems.
- Teaching that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding STDs, including HIV/AIDS.
- Teaching the positive benefits of abstinence until marriage and the risks of premarital sexual activity.
- Providing opportunities that allow for interaction between the parent or legal guardian and the student.
- Providing factually accurate biological or pathological information that is related to the human reproductive system.

Materials used for this instruction must be age appropriate, and information conveyed must be objective and based on scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education.

The act also adds new instructional requirements in the reproductive health and safety education program. The instruction must:

- Teach about STDs, including:
  - How they are and are not transmitted.
  - The effectiveness and safety of all federal Food and Drug Administration- (FDA) approved methods of reducing the risk of contracting STDs.
  - Information on local resources for testing and medical care for STDs.
  - Rates of infection among pre-teen and teens of known STDs.
  - The effects of contracting an STD, with particular information on the effects of contracting Human Papilloma Virus.
- Teach about the effectiveness of and safety of FDA-approved contraceptive methods in preventing pregnancy.
- Teach awareness of sexual assault, sexual abuse, and risk reduction including:
  - A focus on healthy relationships.
  - What constitutes sexual assault and sexual abuse, the causes of the behaviors, and risk reduction.
  - Information about resources and reporting procedures.
  - An examination of common misconceptions and stereotypes about sexual assault and sexual abuse.

Materials used for this instruction must be age appropriate, and information conveyed must be objective and based on scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education. Each local board of education must adopt a policy and provide a mechanism to allow a parent or guardian to withdraw his or her child from the required instruction.

Finally, the act mandates that each LEA must provide a comprehensive school health education program that meets all of the requirements of the law and all of the objectives established by the State Board of Education. Local boards of education may expand on the subject areas to be included in the program and on the instructional objectives to be met.

This act became effective June 30, 2009, and applies beginning with the 2010-2011 school year. (DC)

Amend Law Regarding School Improvement Plans

S.L. 2009-223 (HB 1446) makes several changes to the development and approval of school improvement plans including:

- Shortening the length of time that the plan remains in effect from three years to two years.
- Requiring that the school improvement team analyze student data to identify root causes for problems and to determine actions to address them.

- Requiring school improvement plans to contain clear targets, explicit indicators and actual measures, and expeditious time frames for meeting the measurement standards.
- Requiring that the plans take into account the goals for public schools adopted by the State Board of Education.
- Requiring that the school improvement plans for continually low-performing schools be reviewed and approved by the State Board of Education.

Local boards of education must adopt a policy to ensure that the composition of school improvement teams complies with the current law.

This act became effective June 30, 2009, and applies beginning with the 2009-2010 school year. (SI)

Modify History and Geography Curricula

S.L. 2009-236 (HB 1032) modifies the history and geography curricula at the elementary and middle school level. The new requirement will be a yearlong course on North Carolina history and geography in elementary school and a yearlong course on North Carolina history with United States history integrated into the instruction in middle school. Each course may include up to two weeks of instruction relating to the local area in which the students reside.

This act became effective June 30, 2009, and applies beginning with the 2010-2011 school year. (SI)

Assignment of Multiples to Charter Schools

S.L. 2009-239 (HB 316) directs charter schools to enter one surname to represent all multiple birth siblings if a lottery is necessary to select students for admission. If the surname of the multiple birth siblings is selected, then all of the multiple birth siblings must be admitted.

This act became effective June 30, 2009, and applies beginning with the 2009-2010 school year. (DC)

After-School Child Care Programs

S.L. 2009-244 (SB 1030) directs the Division of Child Development of the Department of Health and Human Services to establish and implement a policy that defines any building currently approved for school occupancy and that houses a public or private elementary school to include the playgrounds and athletic fields as part of the school building when that building is used to serve school-age children in after-school child care programs. If any playground or athletic field does not meet licensure standards promulgated by the North Carolina Child Care Commission, it must be noted on the program's licensure and rating information.

The Division of Child Development must establish procedures for approving education criteria for after-school child care program coordinators and group leaders. The procedures must consider general education coursework, including sociology, psychology, and teacher education courses as eligibility requirements that may enhance the star rating of a child care facility.

This act became effective June 30, 2009. (DC)

Establish NC Financial Literacy Council

S.L. 2009-265 (SB 1019). See **State Government**.

Extend School Formula Study Committee

S.L. 2009-276 (HB 79) allows the Joint Legislative Study Committee on Public School Funding Formulas (Committee) to review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and requires the Committee to evaluate the impact of those modifications. The Committee must terminate upon completion of its evaluation.

The Committee is authorized to meet during sessions of the General Assembly and may report to the General Assembly at least once a year on its activities.

This act became effective July 10, 2009. (SI)

Modify DPI Reporting Requirements/Building Code/High School

S.L. 2009-305, Sec. 5 (SB 689, Sec. 5) clarifies that it is permissible for The University of North Carolina constituent institutions and other colleges and universities to use, without modification, both existing and new facilities that comply with the North Carolina State Building Code and applicable local ordinances for public school students in joint or cooperative programs. Examples of such joint or cooperative programs are early college, middle college, or dual enrollment programs that require the students to be on a college or university campus for their classes.

This section became effective July 17, 2009. (DC)

City Managers on School Boards

S.L. 2009-321 (HB 661). See **Local Government**.

Probationary Teacher Appeals

S.L. 2009-326 (SB 962) provides the following appeal rights to probationary teachers:

- By May 15th, a superintendent must provide a probationary teacher with written notice of the intent to recommend nonrenewal and of the teacher's right, within 10 days, to request (1) written notice of the reasons for the recommendation and the information the superintendent may share with the local board of education (board) to support the recommendation of nonrenewal and (2) a hearing prior to the board making a decision.
- Hearing for Teachers Eligible for Career Status: A probationary teacher eligible for career status may request a hearing. If timely requested, the superintendent must arrange the hearing. The teacher must be permitted to submit supplemental information to the superintendent and board prior to the hearing or the board's decision. A probationary teacher will not have a right to a hearing if the reason for not recommending career status is a justifiable board or superintendent-approved decrease in the number of positions due to district reorganization or decreased enrollment or funding.
- Failure to file a timely request waives a probationary teacher's right to information and a hearing.
- The board must adopt policies to provide for the orderly exchange of information prior to the board's decision on nonrenewal.
- Hearing for Probationary Teachers Not Eligible for Career Status (Years 1, 2, and 3): Grant of a hearing for probationary teachers not eligible for career status is discretionary with the board. The probationary teacher, however, does have the

right to petition the board for a hearing on the superintendent's recommendation for nonrenewal. The board must notify the probationary teacher of its decision on whether to grant the hearing.

- Conduct of Hearings: Hearings must be held pursuant to the provisions of G.S. 115C-45(c), providing for appeals to the board in administrative matters. Those appeals must be noticed and a record of the hearing entered into board hearings. The board may designate hearing panels of not less than two members of the board to hear appeals on behalf of the board.
- By June 15th, the board must notify a probationary teacher whose contract will not be renewed of its decision. If a teacher requests information or a hearing, the board must provide nonrenewal notification by July 1, or a later date with the written consent of the superintendent and teacher. If a board fails to vote on granting career status, the teacher is entitled to an additional month's pay for every 30 days or portion thereof after June 16, or the later dates triggered by an information request or hearing, if a majority of the board belatedly votes against granting career status.

This act became effective July 24, 2009. Provisions concerning probationary teachers eligible for career status apply to proceedings initiated after August 31, 2010. The remainder of the act applies to proceedings initiated after August 31, 2009. (SK)

Encourage Policies to Facilitate Graduation

S.L. 2009-330 (HB 187) directs local boards of education (local boards) to work with local chambers of commerce, as well as local business leaders, to encourage employers to adopt personnel policies to allow parents to take time to attend conferences with their children's teachers. Local boards also are directed to adopt a policy to provide assistance and support to encourage pregnant and parenting students to remain in school and graduate.

The act encourages local boards to adopt policies to do the following:

- Implement programs to assist students in making a successful transition between middle school and high school.
- Increase and support parental involvement in student achievement and successful progress toward graduation.
- Reduce suspension and expulsion rates and provide for academic progress during suspensions.

This act became effective July 24, 2009. (KM)

Special Education Changes

S.L. 2009-331 (HB 582) clarifies that a student identified as eligible for special education under the federal Individuals with Disabilities Education Improvement Act (IDEA) and who resides in a local school administrative unit (LEA), but is not domiciled in that LEA, may attend a public school in that LEA while the student is under a term of suspension or has been expelled from another school if all of the other requirements for admission are met. If a student with a disability is denied admission because of a suspension or expulsion, the local board of education still must provide educational services to the student to the same extent it would have provided educational services if the student had been enrolled in that LEA at the time of the suspension or expulsion as required under IDEA.

This became effective July 24, 2009. (KM)

Counties and Schools Share Physical Education Equipment

S.L. 2009-334 (HB 1471) directs the State Board of Education to encourage local boards of education to enter into agreements with local governments and other entities regarding the joint use of facilities for physical activity. The agreements should detail opportunities, guidelines, and the roles and responsibilities of the parties, including responsibilities for maintenance and liability of the jointly-used facilities.

This act became effective July 24, 2009. (DC)

Continue School Construction Funding

S.L. 2009-395 (HB 311). See **Finance**.

Local Government Code of Ethics

S.L. 2009-403 (HB 1452). See **Local Government**.

Amend the Compulsory School Attendance Law

S.L. 2009-404 (SB 708) amends the compulsory school attendance law by clarifying that a principal or superintendent's designee may excuse a child temporarily for a lawful absence, and a principal's designee may notify parents or guardians of excessive absences, review reports, and make determinations as to whether a parent acted in good faith to comply with the compulsory school attendance law, and notify appropriate authorities based on that decision.

The act clarifies that nonpublic schools must make, maintain, and render attendance records for children of compulsory school age attending nonpublic schools.

For a violation by a parent of the compulsory attendance law, the act establishes that documentation demonstrating notification of a child's unjustified absences to the parent, guardian, or custodian will constitute prima facie evidence of the parent's responsibility for the absences.

This act became effective August 5, 2009, and applies beginning with the 2009-2010 school year. (KM)

Report School Violence to Superintendent/Require Notification Policy

S.L. 2009-410 (HB 1078) directs principals or their designees to notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement about the occurrence of any of the following acts on school property: assault resulting in serious personal injury; sexual assault; sexual offense; rape; kidnapping; indecent liberties with a minor; assault involving the use of a weapon; or possession of a firearm, weapon, or controlled substance in violation of the law. The notification to the superintendent or the superintendent's designee must be made by the end of the workday in which the incident occurred when reasonably possible, but no later than the end of the following workday. The superintendent then must provide the information to the local board of education.

The act requires local boards of education to adopt a policy on notification to parents or legal guardians of any students alleged to be victims of any act required to be reported to law enforcement and the superintendent. This requirement applies beginning with the 2010-2011 school year.

This act became effective August 5, 2009. (DC)

North Carolina Virtual Public Schools

S.L. 2009-451, Sec. 7.9 (SB 202, Sec. 7.9) provides that the North Carolina Virtual Public School (NCVPS) must maintain an administrative office at the Department of Public Instruction (DPI) and report to the State Board of Education (SBE). Course quality standards must be established and met, and all e-learning opportunities offered by State-funded entities to public school students must be consolidated under the NCVPS program in order to eliminate course duplication. After course consolidation occurs, the Director of the NCVPS must prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units (LEAs) to expand their available instructional opportunities. The first available e-learning opportunities should include courses that are required as part of the standard course of study for high school graduation and Advanced Placement courses not otherwise available.

The section clarifies that the NCVPS is available at no cost to all high school students in the State who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs and that the NCVPS can provide only high school courses. The DPI is responsible for communicating to LEAs about all applicable guidelines regarding the enrollment of nonpublic school students in the NCVPS courses.

The SBE is required to implement a new allotment formula for e-learning by the 2010-2011 fiscal year.

To operate the NCVPS, the SBE is to utilize funding sources in the following order:

- The General Fund appropriation for NCVPS.
- Funds available from the American Recovery and Reinvestment Act of 2009.
- Up to $6 million from the School Technology appropriation.

By December 15, 2009, the SBE must report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division on the implementation of this section. If the SBE fails to report on a new allotment formula by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of the State Controller must prevent the expenditure of funds related to the operation of the SBE.

This section became effective July 1, 2009. (DC)

Learn and Earn Online

S.L. 2009-451, Sec. 7.10(a)-(j) (SB 202, Sec. 7.10(a)-(j)) requires that funds appropriated for the Learn and Earn Online (LEO) program, which allows high school students to enroll in college courses to qualify for college credit, be used for college tuition and associated fees and textbooks for course participation, and for a liaison position in the Department of Public Instruction (DPI) to coordinate with The University of North Carolina (UNC) and the North Carolina Community College System (NCCCS) and communicate program information with school personnel. Online courses must be made available to students through UNC and the NCCCS.

The State Board of Education (SBE) must determine the allocation of LEO course offerings across the State and allot funds for tuition, fees, and textbooks based on verified credit hour enrollment. The Office of State Budget and Management must transfer sufficient funds for courses offered by community colleges to the Community College System Office.

The UNC program must report to The University of North Carolina Board of Governors. The NCCCS program must report to the State Board of Community Colleges. DPI must report to the SBE.

UNC and the NCCCS must provide oversight and coordination to avoid course duplication, including coordination with DPI and the North Carolina Virtual Public School. Programs must establish course quality and rigor standards and conduct evaluations to ensure online courses meet established standards.

Textbooks for LEO courses may be purchased by local school administrative units through DPI's textbook warehouse in the same manner as other adopted textbooks.

The section clarifies that any student enrolled in grades 9, 10, 11, or 12 and participating in the LEO program is permitted to enroll in online courses through a community college for college credit. For the 2009-2011 biennium, nonpublic high school students are permitted to enroll in any LEO course with space available that has been offered to but not filled by any eligible public school student. Nonpublic school students are responsible for supplying their own textbooks and materials.

This section became effective July 1, 2009. (KM)

Dropout Prevention Grants

S.L. 2009-451, Sec. 7.13, as amended by S.L. 2009-575, Sec. 3L (SB 202, Sec. 7.13, as amended by HB 836, Sec. 3L) allows the Committee on Dropout Prevention (Committee), as reestablished in Section 7.14 of S.L. 2008-107, to provide grants to new recipients and to extend additional funding to organizations that were previously funded.

The section establishes specific criteria that apply to all types of dropout prevention grants approved by the Committee. Grants must be issued in varying amounts up to $175,000, and 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 coordinated dropout prevention and reentry programs for middle and high schools and serve as effective models for other programs.

Grants must be made no later than November 1, 2009. Grants must be expended by June 30 of the first full fiscal year after the grant is issued.

The Committee must evaluate the impact of the grants awarded under this section. 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, 2010.

Recipients of the grants must report to the Committee by January 31, 2011, and September 30, 2011. The reports must provide information to assist the Committee in its evaluation.

The Committee must make an interim report of the evaluations of the grants by March 31, 2011, and a final report by November 15, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee.

This section became effective July 1, 2009. (SK)

Assessment and Accountability

S.L. 2009-451, Sec. 7.18 (SB 202, Sec. 7.18) as amended by S.L. 2009-575, Sec. 3F (HB 836, Sec. 3F) requires the State Board of Education (State Board) to use funds appropriated for assessment and accountability to develop new end-of-course and end-of-grade tests, identify national assessments, or both, as determined by the State Board. The development of any new tests replacing end-of-course and end-of-grade tests must be aligned with the new essential standards and included in the State Board's new accountability restructuring plan.

In addition, during the 2009-2010 school year, the State Board must pilot a developmentally appropriate diagnostic assessment for students in elementary grades that will (i) enable teachers to determine student learning needs and individualize instruction, and (ii) ensure that students are adequately prepared for the next level of coursework. The State Board must report the results of the pilot to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2010.

This section became effective July 1, 2009. (SI)

Development of a PreK-20 Data System

S.L. 2009-451, Sec. 7.19 (SB 202, Sec. 7.19) as amended by S.L. 2009-575, Sec. 3G (HB 836, Sec. 3G) directs the State Board of Education (SBE), with the cooperation and assistance of the North Carolina Community College System (NCCCS) and The University of North Carolina (UNC), to collaboratively develop and systematically determine the technical specifications and data standards for a PreK-20 data system to centralize data collected about students enrolled in prekindergarten programs through doctoral programs. The data system must be built upon the current capacity, programs, and initiatives of the SBE, the NCCCS, and the UNC.

The PreK-20 data standards and specifications must include:

- The types and forms of data to be included in the PreK-20 data system, including longitudinal data and the use of a unique student identifier.
- The capacity of a shared PreK-20 data system.
- The degree and extent of cooperation between a shared PreK-20 data system and current data collection systems of the SBE, the NCCCS, and the UNC.
- The minimum capacity and technical specifications needed for each data system to feed into a shared PreK-20 data system.
- The ability for data in a shared PreK-20 data system to be understood and used by interested stakeholders, including federal agencies and other State agencies.
- The feasibility of broadening the PreK-20 data system to include other sources of data that are needed for a unified statewide data collection system.

The SBE, in collaboration with the NCCCS and the UNC, also must develop a strategy for tracking students for five years after they complete their education at a North Carolina public educational institution.

Standards and specifications must be submitted to the Education Cabinet no later than March 1, 2010. The Education Cabinet must submit its recommendations to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management by April 1, 2010.

This section became effective July 1, 2009. (DC)

Eliminate Certain Tests

S.L. 2009-451, Sec. 7.20 (SB 202, Sec. 7.20) eliminates the competency testing program. The program, which was administered annually to ninth graders, had required students to pass a competency test demonstrating required minimum standards for graduation.

This section became effective July 1, 2009. (KM)

Remove Barriers to Lateral Entry into Teaching

S.L. 2009-451, Sec. 7.21 (SB 202, Sec. 7.21) directs the State Board of Education to remove barriers to lateral entry into teaching by:

- Reviewing the lateral entry program to identify and remove barriers for skilled persons from the private sector to enter the teaching profession.
- Reducing the coursework requirements by consolidating the required competencies into fewer courses and fewer semester hours of courses.
- Providing additional opportunities for completing courses online and at community colleges.

The State Board of Education must report to the Joint Legislative Education Oversight Committee by January 15, 2010, on the implementation of the section.

This section became effective July 1, 2009. (SK)

No Pay Decrease for Teachers Who Become Assistant Principals

S.L. 2009-451, Sec. 7.22 (SB 202, Sec. 7.22) requires that a teacher who becomes an assistant principal without a break in service must be paid, on a monthly basis, at least as much as he or she would earn as a teacher employed by that local school administrative unit.

This section became effective July 1, 2009, and applies to all persons initially employed as assistant principals on or after that date. (SI)

Local Boards Must Inform Public About School Report Cards

S.L. 2009-451, Sec. 7.28 (SB 202, Sec. 7.28) requires local boards of education to ensure that the North Carolina School Report Card issued by the State Board of Education for that local board receive wide distribution to the local press or otherwise.

This section became effective July 1, 2009. (KM)

Plan for Statewide Motor Coach Permit

S.L. 2009-451, Sec. 7.29 (SB 202, Sec. 7.29) requires the State Board of Education (SBE), in cooperation with the Division of Motor Vehicles, to develop a plan for issuing a single permit that can be used statewide by a commercial motor coach company when it seeks to contract with a local school system to provide transportation for school-sponsored trips.

The SBE and the Division of Motor Vehicles must consult with various interested parties in the development of the plan.

The SBE and the Division of Motor Vehicles are required to report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 2010. Before the plan is implemented, the Commission must make any recommendations, including proposed legislation, to the 2010 Session.

This section became effective July 1, 2009. (SK)

National Board for Professional Teaching Standards Application Costs

S.L. 2009-451, Sec. 7.30 (b) (SB 202, Sec. 7.30 (b)) provides that, beginning July 1, 2010, the State no longer will pay the participation/application fee for teachers seeking National Board for Professional Teaching Standards (NBPTS) certification. Instead, the State will lend teachers the participation/application fee. Teachers must repay this fee to the State Education Assistance Authority within three years.

The State Education Assistance Authority must adopt rules and guidelines regarding the loan and repayment of the NBPTS participation/application fee. The State Board of Education must adopt policies and guidelines to implement other aspects of NBPTS certification that the State supports, including approved paid leave for teachers participating in the process and paying a salary differential to teachers who attain NBPTS certification.

This subsection becomes effective July 1, 2010, and applies beginning with the 2010-2011 school year. (SI)

School Technology Plans

S.L. 2009-451, Sec. 7.31 (SB 202, Sec. 7.31) amends the statutes governing the Commission on School Technology, the State School Technology Plan, and local school system technology plans.

Commission on School Technology. – This section removes language that provided that the Commission on School Technology (Commission) exercised its statutory powers independently of the Department of Public Instruction (DPI). It moves the responsibility of developing, proposing, and reporting of a State School Technology Plan (State Plan) from the Commission to the State Board of Education (SBE). The section changes the purpose of the Commission to be advisory to the SBE on the development of a State Plan that ensures the effective use of technology is integrated into the State's public schools and ensures equity and access to technology for the entire public school population in the State. The Commission must meet at least twice each fiscal year and is to provide input and feedback on the State Plan prior to approval. This section reduces the number of members of the Commission from 19 to 10 and directs the Chair of the SBE to designate the Commission member or members who will serve as chair or cochairs of the Commission. This section clarifies that DPI will provide requested professional and clerical staff to the Commission and removes provisions that allowed outside consultants to be hired by the Commission.

State School Technology Plan. – This section directs the SBE to review, revise, and approve the State Plan at least every two years in the odd-numbered years, beginning in 2011. The State Plan must be updated more often, as required, if significant changes occur related to the SBE's goals, curriculum standards, and available technology. By February 1 of each year, the SBE must report to the Joint Legislative Education Oversight Committee on the status of the State Plan. The DPI is charged with monitoring and evaluating the development and implementation of the State Plan.

Local School System Technology Plans. – Existing law provides that local boards of education must develop local school technology plans (local plans) that meet the requirements of the State Plan. This section encourages local boards of education to incorporate their local plans into their strategic planning. It also removes the requirement that the Office of Information Technology Services assist local boards of education in developing their local plans, as well as the requirement that the Office of Information Technology Services evaluate the local plans. The DPI is responsible now for monitoring and evaluating the development and implementation of the local plans. This section clarifies that State School Technology Fund monies may not be used until the local plan is approved by the SBE.

This section became effective July 1, 2009. (DC)

Salary of Teachers with Graduate Degrees

S.L. 2009-451, Sec. 7.35 (SB 202, Sec. 7.35) codifies language directing the State Board of Education to maintain the same policies that were in effect for the 2008-2009 fiscal year relating to masters pay for teachers. The effect of this section is to maintain the policy that in order to get the 10% salary increment, a teacher's masters degree has to be in an education or subject area directly related to an existing area of licensure and current teaching assignment or instructional support responsibilities.

This section became effective July 1, 2009. (SK)

Charter School Evaluation

S.L. 2009-451, Sec. 7.38 (SB 202, Sec. 7.38) allows $50,000 a year for the 2009-2010 and 2010-2011 fiscal years to be used by the North Carolina Center for Public Policy Research, Inc. (Center) to evaluate charter schools. The Center must consider the advantages and

disadvantages of North Carolina's method of financing charter school operations, as well as the extent to which charter schools have accomplished the following objectives:

- Improved student learning.
- Increased learning opportunities for all students, with special emphasis on expanded learning experiences for students at risk of academic failure or students who are academically gifted.
- Encouraged the use of different and innovative teaching methods.
- Created new professional opportunities for teachers, including opportunities to be responsible for the learning program at the school level.
- Provided parents and students with expanded choices in the types of educational opportunities available within the public school system.
- Held the charter schools accountable for meeting measurable student achievement results and provided a method to change the schools from rule-based to performance-based accountability systems.

The Center must report the results of its evaluation to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the North Carolina General Assembly.

This section became effective July 1, 2009. (SI)

Governor's School Tuition

S.L. 2009-451, Sec. 7.39 (SB 202, Sec. 7.39) directs the State Board of Education to implement a $500 tuition charge for students selected to attend the Governor's School of North Carolina.

This section became effective January 1, 2010, and applies to sessions of Governor's School beginning after that date. (DC)

More Teachers in Classroom

S.L. 2009-451, Sec. 7.41, as amended by S.L. 2009-575, Sec. 3H (SB 202, Sec. 7.41, as amended by HB 836, Sec. 3H) repeals the act that allows a local board of education to assign to serve as full-time mentors the greater of five or 5% of the number of National Board Certified teachers it employed during the immediately preceding school year.

This section becomes effective June 30, 2011. (SK)

Transfer the North Carolina Center for the Advancement of Teaching to the State Board of Education

S.L. 2009-451, Sec. 9.13 (SB 202, Sec. 9.13). See also **Universities** in this chapter.

Volunteers to Support Academic Success in School

S.L. 2009-453 (SB 1028) directs local boards of education to develop the following:

- Policies and programs to encourage the use of community-based academic booster organizations, which may be known as Community Achievement Network – Developing Our Educational Resources (CAN DOER) organizations, to provide tutoring and other appropriate services to support student academic achievement.
- Policies or procedures for approving the use of volunteer organizations and for approving the use of individual volunteers.
- Policies or procedures to make information available to parents and students about tutoring and other academic support services available to students.

This act became effective August 7, 2009. (SI)

Sex Offender Can't Drive Bus with Children

S.L. 2009-491 (HB 1117). See **Transportation**.

Sex Offender Registry/Liberties w/Student

S.L. 2009-498 (HB 209). See **Criminal Law and Procedure**.

Credit Education Required for Students

S.L. 2009-504 (HB 1474) requires the standard course of study to include in the personal financial literacy instruction the following components of credit education:

- The true cost of credit.
- Choosing and managing a credit card.
- Borrowing money for an automobile or other large purchase.
- Home mortgages.
- Credit scores and credit reports.
- Other relevant financial literacy issues.

The public schools must provide instruction in personal financial literacy for all students. The State Board of Education will determine into which courses and grade levels these components will be integrated.

This act became effective August 26, 2009, and applies beginning with the 2011-2012 school year. (SI)

Unemployment Insurance/School Teacher-Related Amendments

S.L. 2009-506 (SB 894) exempts from the definition of "employment," for the purposes of unemployment benefits, any service performed by a substitute teacher or other substitute school employee for a public, charter, or private school unless the individual is employed as a full-time substitute. A full-time substitute is defined as an individual who works for no less than 30 hours per week over at least six consecutive months of a school year. The act also exempts from the definition of "employment," for the purposes of unemployment benefits, any performance of extra duties for a public, charter, or private school such as coaching athletics, acting as a choral director, or other extra duties.

The act clarifies that an individual is disqualified from receiving unemployment benefits if his or her unemployment results from the loss of ability to successfully apply for a necessary license, certificate, permit, bond, or surety. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct is required for disqualification for unemployment benefits, if the basis of the disqualification is a failure to successfully apply for or maintain a necessary license, certificate, permit, bond, or surety.

This act became effective October 1, 2009, and applies to claims filed on or after that date. (DC)

Amend Law Regarding Personal Education Plans

S.L. 2009-542 (HB 804) clarifies that personal education plans must be developed or updated no later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student. Personal education plans are for any student at risk of academic failure who is not performing at grade level as identified by the factors listed, such as grades, observations, and State assessments. Local school administrative units must give notice

of a student's personal education plan and a copy of the plan to the student's parent or guardian. In addition, the act clarifies that failure to provide or implement a personal education plan may not result in a cause of action for monetary damages.

This act became effective August 28, 2009, and applies beginning with the 2009-2010 school year. (DC)

Diabetes Control Plans in Charter Schools

S.L. 2009-563 (SB 738) directs the Department of Public Instruction to ensure that the guidelines for individual diabetes care plans adopted by the State Board of Education are implemented in charter schools in which students with diabetes are enrolled. Local boards of education and boards of directors of charter schools must report annually, on or before August 15, to the State Board of Education to provide information demonstrating compliance with the guidelines.

This act became effective August 28, 2009, and applies beginning with the 2009-2010 school year. (SK)

Higher Education

Development of a PreK-20 Data System

S.L. 2009-451, Sec. 7.19 (SB 202, Sec. 7.19). See also **Public Schools** in this chapter.

Eliminate Some Tuition Waivers

S.L. 2009-451, Secs. 8.11(a)-(d) (SB 202, Secs. 8.11(a)-(d)) as amended by S.L. 2009-575, Sec. 5, (HB 836, Sec. 5) makes changes to tuition and fee waivers for North Carolina residents aged 65 or older as follows:

- Eliminates the tuition and fee waivers for classes at The University of North Carolina.
- Eliminates the statutorily required fee waivers for community college classes.
- Waives tuition for up to six hours of credit instruction and 96 contact hours of noncredit instruction per academic semester for community college classes.

Sections 8.11(a)-(d) became effective July 1, 2009.

S.L. 2009-451, Sec. 8.11(e) (SB 202, Sec. 8.11(e)) eliminates the tuition waiver for prison inmates for community college classes.

Section 8.11(e) becomes effective July 1, 2010. (DC)

The Education Access Rewards North Carolina Scholars Fund

S.L. 2009-451, Sec. 9.2 (SB 202, Sec. 9.2) makes the following changes to the Education Access Rewards North Carolina (EARN) Scholars Fund:

- Funds appropriated for the 2009-2010 fiscal year to the State Education Assistance Authority for the EARN grants must be used only to fund EARN grants for the 2009-2010 academic year.
- Reduces the maximum grant for which a student is eligible from $4,000 per academic year to $2,000 for the 2009-2010 academic year. The full amount of the grants awarded for the 2009-2010 academic year must be paid in the fall semester.
- Eliminates the EARN Scholars Fund effective July 1, 2010.

Campus financial aid offices at each postsecondary institution are encouraged to work with EARN recipients to secure replacement financial aid for the 2010-2011 academic year and appropriate subsequent academic years.

This section became effective July 1, 2009. (SI)

2009 Viticulture/Enology Act

S.L. 2009-539 (HB 667). See **Alcoholic Beverage Control**.

Community Colleges

Students Under 16 May Attend Community College

S.L. 2009-46 (HB 65) reenacts a statutory provision that gives community college presidents the discretion to admit certain intellectually gifted and mature students under the age of sixteen. These decisions are based on rules established by the State Board of Community Colleges in consultation with the Department of Public Instruction. A designated representative from the education unit in which the student is currently enrolled also has to approve the student's enrollment in a community college.

This act became effective March 1, 2009. (SK)

Community Colleges May Offer Safety Driving Course

S.L. 2009-119 (HB 391) authorizes trustees of local community colleges to permit high school students to take noncredit courses in safe driving on a self-supporting basis during the academic year or the summer.

This act became effective June 19, 2009. (KM)

Purchasing Process for Community Colleges

S.L. 2009-132 (HB 490) grants additional purchasing flexibility to community colleges by:

- Eliminating the requirement that items purchased must be the same as items available under State term contracts.
- Permitting community colleges to purchase items from noncertified sources that are the same or substantially similar in quality, service, and performance as items available under State term contracts.
- Allowing a community college to purchase items that are neither available under State term contracts nor substantially similar to items available under State term contracts.

The State Board of Community Colleges (State Board) and the Department of Administration are required to jointly adopt policies and procedures for monitoring the implementation of purchasing flexibility.

The Department of Administration, for contracts entered into after October 1, 2009, is required either to provide for purchasing flexibility for community colleges or make term contracts inapplicable to community colleges.

The State Board, in consultation with the Department of Administration, must review the purchasing process for community colleges and may increase or decrease the purchasing/delegation benchmark for each community college based on the college's overall capabilities.

This act became effective October 1, 2009. (SI)

Building Code / High Schoolers at Community Colleges

S.L. 2009-206 (HB 735) clarifies that both existing and new community college facilities that comply with the State Building Code and applicable local ordinances may be used without modification for joint or cooperative programs that include public school students in the 12th grade and below, and permits counties to obtain permits under the 2006 Building Codes until August 1, 2009, for construction of facilities for administrative purposes.

This act became effective June 26, 2009. (SI)

Fayetteville Technical Umstead Act Exemption

S.L. 2009-207 (HB 698) creates an exception to the statutory prohibition preventing units, departments, and agencies of State government from engaging in the sale of merchandise or services in competition with private enterprise. Fayetteville Technical Community College can use personnel, equipment, and facilities relating to Interactive Three Dimensional (Advanced Visualization) technology and Tele-Presence technology. Proceeds generated must be used either to continue the function of the program or support the educational mission of the school.

This act became effective June 26, 2009. (SK)

No Penalty for Community College Audit Exception

S.L. 2009-208 (HB 543) repeals a provision that required the State Board of Community Colleges to assess a 25% fiscal penalty for community college audit exceptions. Under existing law, when audit errors are discovered, community colleges are required to return 100% of any excess funds they received. The 25% penalty was an additional penalty on top of the excess funds required to be returned to the General Fund.

This act became effective June 26, 2009. (DC)

Community College Construction Process

S.L. 2009-229 (HB 808) makes statutory changes to give the State Board of Community Colleges (State Board) authority regarding certain fee negotiations, contracts, and capital improvements.

The act provides the State Board with authority for design, construction, repair or renovation projects of the North Carolina Community College System (System) requiring an estimated expenditure of public money of $1 million or less, to:

- Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
- Develop procedures governing the responsibilities of the System and its community colleges to perform certain architectural and engineering review duties previously performed by the Department of Administration and the Director or Office of State Construction.
- Use existing plans and specifications for construction projects, where feasible.

The act also authorizes the State Board to delegate this authority to community colleges qualified under guidelines adopted by the State Board and approved by the State Building Commission and the Director of the Budget.

The System must use the standard contracts for design and construction currently being used by the Office of State Construction for State capital improvement projects. Contracts may not be divided to evade the monetary limit of $1 million. The act clarifies that the Department of Administration would not be the awarding authority for contracts awarded under the act.

The State Board must report annually to the State Building Commission the following:

- A list of projects awarded under the act.

- The estimated project cost and actual cost.
- Names of each person awarded contracts under the act.
- Whether the person or business awarded such contracts meets the definition of "minority business" or "minority person."

This act became effective June 30, 2009, and applies to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010. (KM)

Continuation Review of the Prisoner Education Program

S.L. 2009-451, Sec. 8.19 (SB 202, Sec. 8.19) requires the Department of Correction and the Community Colleges System Office to jointly prepare the continuation review of the community college prisoner education program.

The report must include:

- Information on the total cost of the program.
- An analysis of the appropriate funding source, including prisoners' ability to pay.
- A review of which programs are most vital to the prisoner population and a priority order of programs to be restored.
- An analysis of the cost per full-time equivalent to provide the programs to the prison population compared to the cost for the general population, including the full-time equivalent costs for curriculum, continuing education, and basic skills courses.
- An analysis of the feasibility of limiting access to the education program to those prisoners who will be released within a certain time frame and to programs with lower recidivism rates.

This section became effective July 1, 2009. (SK)

No State Funds for Intercollegiate Athletics

S.L. 2009-451, Sec. 8.21 (SB 202, Sec. 8.21) mandates that no State funds, student tuition receipts, or student aid funds may be used to create, support, maintain, or operate an intercollegiate athletics program at a community college.

This section became effective July 1, 2009. (DC)

Ethics Technical Correction

S.L. 2009-549, Sec. 19 (HB 817, Sec. 19) prohibits members of the General Assembly from being appointed to the local board of trustees for a community college.

This section became effective August 28, 2009, and applies to appointments made on or after this effective date only, and does not apply to any reappointment of a member of the General Assembly serving on any board of trustees for a community college on that date. (DC)

Student Protection Fund/Proprietary Schools

S.L. 2009-562 (SB 860) establishes a Student Protection Fund (Fund) for proprietary school students and modifies bond requirements for proprietary schools regulated by the State Board of Community Colleges (State Board).

The Fund will compensate students enrolled in proprietary schools licensed by the State Board who suffer a loss of tuition, fees, or other instructional-related expenses by failure of the school to offer or complete student instruction. The Fund is established in the Department of State Treasurer and administered by the State Board.

Students who have suffered a loss compensable under the Fund may qualify for repayments under the Fund. The State Board must first issue repayment to students from the required bonds, or bond alternatives, maintained by the proprietary school ceasing to operate. If

the Fund is insufficient to cover qualified claims, the State Board must develop a method of allocating funds among claims.

The act requires proprietary schools to make non-refundable payments into the Fund as a condition of licensure. Failure to pay the assessments required under the Student Protection Fund is a Class 3 misdemeanor.

The act establishes a catastrophic loss amount, the amount of funds required to protect prepaid student tuition in case of a large-scale event, of $1 million. The act also established a Fund cap amount, a reserve over the catastrophic loss amount, of $1.5 million. The State Board must suspend payments into the Fund for all schools continuously licensed for more than eight years if the Fund balance is equal to or exceeds the Fund cap amount. Payments must be resumed when the balance of the Fund is less than the catastrophic loss amount.

The State Board may assess additional fees to the extent necessary to cover qualified student claims if claims against the Fund exceed the catastrophic loss amount. The catastrophic assessment cannot exceed one-half of the annual payment required of schools. If the Fund amount is still insufficient to cover claims, the State Board must develop a method of allocating the funds among claims.

The act creates a Student Protection Fund Advisory Committee (Committee) of seven members, appointed by the President of the Community Colleges System for three-year terms, representing the System Office and proprietary schools. The Committee would advise the State Board on matters related to the Fund, including adjustments to fund amounts.

The act also modifies the bond requirements for proprietary schools. All schools must obtain a bond or a bond alternative approved by the State Board. Bonds must be issued in the name of the State Board of Community Colleges and used to reimburse students of proprietary schools that have failed to offer or complete student instruction. The bond amount required varies based on the years of the proprietary school's operation.

This act becomes effective July 1, 2010. (KM)

Universities

Repeal Full Tuition Grant for Graduates of North Carolina School of Science and Mathematics Who Attend a State University

S.L. 2009-451, Sec. 9.6 (SB 202, Sec. 9.6) phases-out the full tuition grant for North Carolina School of Science and Mathematics graduates who attend constituent institutions of The University of North Carolina. The grant will be available only to students enrolled at the North Carolina School of Science and Mathematics for the 2008-2009 academic year or earlier.

Effective July 1, 2014, G.S. 116-238.1, the statutory provision for the grant, is repealed.

This section became effective July 1, 2009. (DC)

Closing the Achievement Gap/Grants

S.L. 2009-451, Sec. 9.7 (SB 202, Sec. 9.7) directs that funds appropriated for "Closing the Achievement Gap" must be used for the sole purpose of supporting the operations and program activities of the North Carolina Historically Minority Colleges and Universities Consortium (HMCUC). HMCUC members must use the funds for the public purposes of developing and implementing after-school programs designed to close the academic achievement gap and improve the academic performance of youth at risk of academic failure and school dropout. The HMCUC may use up to $100,000 each fiscal year for grant administration costs, and may allocate funds to community-based and faith-based organizations located in close proximity to the HMCUC for the public purposes identified by the section.

The HMCUC must report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by May 1 of each year the following:

- The number of programs funded by the HMCUC to Close the Achievement Gap.
- The location and program structure of the programs.
- The amount allocated to the programs.
- The purposes for which the funds were awarded.
- The cost of administering and managing the funds.
- Any other information requested by the Joint Legislative Education Oversight Committee or Fiscal Research Division.

Grants awarded by the HMCUC to Close the Achievement Gap must include as a term of the grant a requirement that recipients report to the Joint Legislative Education Oversight Committee and Fiscal Research Division the following:

- The amount of the grant received.
- The program and purposes for which the grant was requested.
- The methodology used to implement the grant program and purposes.
- The results of the program funded by the grant.
- Any other information requested by the Joint Legislative Education Oversight Committee or Fiscal Research Division.

This section became effective July 1, 2009. (KM)

Amend Legislative Tuition Grant for Part-Time Students

S.L. 2009-451, Sec. 9.8 (SB 202, Sec. 9.8) increases the number of hours that a part-time North Carolina undergraduate student must be enrolled to receive the legislative tuition grant to attend a private institution of higher education. The part-time student must be enrolled in at least nine hours of academic credit per semester and the amount of the legislative tuition grant is calculated on a pro rata basis.

This section became effective July 1, 2009, and applies to academic semesters beginning on or after that date. (SK)

Codify and Increase The University of North Carolina Undergraduate Tuition Surcharge

S.L. 2009-451, Sec. 9.10 (SB 202, Sec. 9.10) codifies and increases The University of North Carolina's undergraduate tuition surcharge. For the 2009-2010 academic year, the Board of Governors will impose a 25% tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than 110% of the credit hours necessary to complete a baccalaureate degree in a five-year program. No surcharge is imposed on any student who exceeds the degree credit hour limits within the equivalent of four academic years of regular term enrollment or within five academic years of regular term enrollment in a degree program designated as a five-year program. The Board of Governors has the authority to waive the tuition surcharge if a student demonstrates that certain conditions substantially disrupted or interrupted the student's pursuit of a degree.

Beginning with the 2010-2011 academic year, the Board of Governors will raise to 50% the tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program.

This section became effective July 1, 2009. (SI)

Transfer the North Carolina Center for the Advancement of Teaching to the State Board of Education

S.L. 2009-451, Sec. 9.13 (SB 202, Sec. 9.13) transfers the North Carolina Center for the Advancement of Teaching (NCCAT) from the Board of Governors of The University of North Carolina to the State Board of Education (SBE). Although the NCCAT will be located under the SBE, its powers and duties are exercised through its own board of trustees which has full authority regarding all aspects of employment and contracts. This section clarifies that the executive director of the NCCAT is appointed by the NCCAT board of trustees. The composition of the NCCAT's board of trustees is amended by removing the President of The University of North Carolina and the Chancellor of Western Carolina University and adding the chair of the SBE, but existing appointed members of the NCCAT's board of trustees will continue to serve until their current terms expire.

The transfer includes the ownership, possession, and control of the NCCAT's properties in Cullowhee and Ocracoke, and the resources, assets, liabilities, and operations maintained, possessed, or controlled by it prior to the transfer. All duties and responsibilities of The University of North Carolina and Western Carolina University regarding the NCCAT cease upon the transfer, except as agreed upon by them with the SBE and the NCCAT. All of the parties must work cooperatively in coordination with appropriate State agencies to allow for an efficient and orderly transfer of duties and responsibilities that is to be completed on or before November 1, 2009. The State must reallocate to Western Carolina University the land grant that is the original parcel of NCCAT real property located in Cullowhee if it is no longer used or occupied by NCCAT.

This section directs that priority of admission to the NCCAT opportunities must be given to teachers with teaching experience of 15 years or less. The NCCAT also may provide training and support for beginning teachers to enhance their skills in order to support the State's effort to recruit and retain beginning teachers.

This section became effective July 1, 2009. (DC)

Amend Aid to Private Medical Schools

S.L. 2009-451, Sec. 9.15 (SB 202, Sec. 9.15) directs an annual appropriation to the Board of Governors of The University of North Carolina (BOG) to provide grants for North Carolina residents who are medical students either at Duke University (Duke) or Wake Forest University (Wake Forest).

In addition to other available financial assistance, North Carolina residents attending medical school at Duke or Wake Forest are awarded a grant of $5,000 for each academic year. The BOG must administer the grants and certify student eligibility before remitting the grant to the medical school on behalf of and to the credit of the medical student. If a student terminates enrollment in medical school and a grant has been paid on the student's behalf, the medical school must refund the full amount of the grant to the BOG.

The BOG must adopt rules for determination of residency for the purposes of the grant, and ensure that the funds are used directly for instruction in medical programs and not for religious or other nonpublic purposes. The BOG must encourage the two medical schools to orient students towards primary care as otherwise required by statute.

The BOG is authorized to transfer unused funds from certain programs to cover extra students in the event insufficient funds are appropriated to cover eligible students. Remaining funds must revert to the General Fund.

The BOG must encourage Duke and Wake Forest to document the number of graduates annually who either enter residencies or locate practices in North Carolina, and to annually report

that information to the BOG. The BOG must annually report the information received from the two schools to the Joint Legislative Education Oversight Committee.

This section became effective July 1, 2009. (KM)

Phase Out Future Teachers Scholarship Loan Program

S.L. 2009-451, Sec. 9.18 (SB 202, Sec. 9.18) provides that scholarship loans from the Future Teachers of North Carolina Scholarship Loan Fund will be awarded only to students who are seniors in the 2010-2011 academic year and who are scheduled to graduate no later than the end of the 2010-2011 academic year. Effective July 1, 2011, the Future Teachers of North Carolina Scholarship Loan program will be repealed.

All financial obligations to any student awarded a scholarship loan before July 1, 2011, must be fulfilled provided the student remains eligible for the scholarship loan. All contractual agreements between a student awarded a scholarship loan before July 1, 2011, and the State Education Assistance Authority remain enforceable and the statutory provisions that would be applicable except for this repeal remain applicable for any scholarship loan awarded before July 1, 2011.

This section became effective July 1, 2009. (SK)

Reduce Number of Courses The University of North Carolina Faculty and Staff May Take Tuition-Free

S.L. 2009-451, Sec. 9.21 (SB 202, Sec. 9.21) reduces from three to two the maximum number of courses per year that The University of North Carolina full-time faculty of the rank of full-time instructor or above and any full-time staff may enroll in, tuition-free, at The University of North Carolina.

This section became effective July 1, 2009. (SI)

No Special Talent Tuition Waivers for Student Athletes

S.L. 2009-451, Sec. 9.22 (SB 202, Sec. 9.22) prohibits the Board of Governors of The University of North Carolina from authorizing a reduced rate of tuition for the special talents of student athletes. It also prohibits the implementation of any policy previously adopted by the Board of Governors of The University of North Carolina that authorizes a reduced rate of tuition for the special talent of athletes.

This section became effective July 1, 2009. (DC)

Campus-Initiated Tuition Increases

S.L. 2009-451, Sec. 9.23 (SB 202, Sec. 9.23) requires that no campus-initiated tuition increase for students who are North Carolina residents be approved by the Board of Governors of The University of North Carolina (BOG) or implemented for the 2010-2011 academic year. The section permits campus-initiated increases for professional and graduate programs for the 2010-2011 academic year approved by the BOG between February 2007 and February 2009 to be implemented for the 2010-2011 academic year.

This section became effective July 1, 2009. (KM)

The University of North Carolina Board of Governors Review Separation and Transition Policy for The University of North Carolina Administrators

S.L. 2009-451, Sec. 9.25 (SB 202, Sec. 9.25) requires the Board of Governors of The University of North Carolina (BOG) to review its current policies regarding salary and other payments made to its top administrators as part of a transition and separation package when any of these administrators voluntarily or involuntarily terminates employment in the administrative position and moves to a lesser position of employment either on a permanent or temporary basis within The University of North Carolina.

The BOG must report its findings and any recommendations for policy changes to the Joint Legislative Education Oversight Committee by April 1, 2010.

This section became effective July 1, 2009. (SI)

Studies

Legislative Research Commission

Various Education Issues

S.L. 2009-574, Secs. 2.21-2.24 and 2.48 (HB 945, Sec. 2.21-2.24 and 2.48) provides that the Legislative Research Commission may study the following topics:

- Innovations in Education.
- Legislative Grants.
- Project Graduate.
- Sports Injuries.
- Science, Technology, Engineering, and Math (STEM) Innovation and Community Collaboration.

The Legislative Research Commission may report its findings, together with any recommended legislation, to the 2010 General Assembly upon its convening.

These sections became effective September 10, 2009. (DA)

New / Independent Studies / Commissions

Joining Our Businesses and Schools Commission

S.L. 2009-339 (SB 1069) establishes the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission (Commission).

The Commission is chaired by the Lieutenant Governor and consists of eighteen appointed members serving three-year terms beginning July 1, 2009.

The Executive Director of the Education Cabinet or the Executive Director's designee, serves ex officio.

The Commission's duties are to:

- Study issues related to economic development through innovative schools.
- Study issues related to economic growth by creating services that equip the workforce to be competitive in a STEM-intensive economy, including ensuring that students gain the skills learned from science, technology, engineering, math, and other rigorous courses.

- Prioritize and customize career clusters identified by the U.S. Department of Education, identify additional career paths, and report recommendations to the State Board of Education.
- Advise the North Carolina Education Cabinet, and specifically DPI, as they develop standard instructional programs for career clusters and their corresponding career paths according to the Early and Middle College model.
- Study the implementation of pilot programs in the seven economic development regions of the State that best suit the regions' needs and prepare students for the increasing academic demands of a global economy.

The Chair must appoint from the Commission's membership a NC STEM Community Collaborative Advisory Committee (Community Collaborative) to ensure that the efforts of the Commission and the Community Collaborative are aligned and informed of each other's activities.

By March 1, 2010, the Commission must make an initial report on the results of its study to the State Board of Education. Upon consideration of the Commission's recommendations, the State Board of Education and DPI must develop instructional programs for at least four career clusters and implement at least one JOBS Early or Middle College High School in each of the economic development regions beginning with the 2010-2011 school year, where feasible, and in all other regions by the 2011-2012 school year.

The Commission must monitor the implementation of its recommendations to the State Board of Education and DPI and report to the General Assembly and the Joint Legislative Education Oversight Committee its recommendations for any legislation needed to implement its recommendations. Interim reports must be made by May 15, 2010, and February 1, 2011, and a final report by May 15, 2012.

The Commission will terminate on June 30, 2012, or upon the filing of its final report.

This act became effective July 24, 2009. (KM)

Establish Joint Legislative Study Committee on State Funded Student Financial Aid

S.L. 2009-451, Sec. 9.24 (SB 202, Sec. 9.24) establishes the Joint Legislative Study Committee on State Funded Student Financial Aid (Committee). The Committee consists of ten members: Five members appointed by the Speaker of the House of Representatives and five members appointed by the President Tempore of the Senate. The State Treasurer, The University of North Carolina, the North Carolina Community College System, and the North Carolina State Education Assistance Authority must cooperate with the study. The State's private colleges and universities and the North Carolina Independent Colleges and Universities are also encouraged to cooperate with the study.

The Committee must study all of the following:

- The best method for using State funds to provide grants, loans, and scholarships for undergraduate, graduate, and professional degree programs. The Committee also must look at the availability and sustainability of existing State, federal, and private funding sources.
- The best method to administer State funded student financial aid, including a review of action by the federal government regarding the federal funding that supports the administration of financial aid in the State. The Committee also must look at the sustainability and efficiency of the current governance structure for awarding financial aid at the State level and the linkage of the governance structure to federal student loan programs and to student loan programs funded through escheats.
- The current governance of the North Carolina State Education Assistance Authority.
- The feasibility of consolidating scholarship, loan, and grant programs including all programs for which eligibility is based on the Free Application for Federal Student Aid.

- The feasibility of consolidating loans, grants, and scholarships available to teacher education students.
- The qualifications for each loan, scholarship, and grant administered by the North Carolina State Education Assistance Authority, the purpose for which the aid is awarded, and other criteria.
- Marketing strategies and how to make the information more transparent, understandable, and accessible to the general public.
- Any other issues that the Committee deems relevant to the study.

The Committee may make an interim report of its findings to the 2009 General Assembly, 2010 Regular Session, and must submit a final report, including legislative recommendations, to the 2011 General Assembly. The Committee terminates upon the filing of the final report or the convening of the 2011 General Assembly, whichever is earlier.

This section became effective July 1, 2009. (SK)

Referrals to Existing Commissions/Committees

Study of Efficient and Effective Community College Administration

S.L. 2009-451, Sec. 8.20 (SB 202, Sec. 8.20) requires the Joint Legislative Program Evaluation Oversight Committee (Committee) to include in the 2010-2011 Work Plan for the Program Evaluation Division of the General Assembly to study the most efficient and effective way to administer the system of community colleges, including the advisability of consolidating community college administrations and strategies for ensuring student access.

The Program Evaluation Division must submit the study to the Committee, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division of the General Assembly on a date to be determined by the Committee.

This section became effective July 1, 2009. (SI)

Joint Legislative Education Oversight Committee Studies

S.L. 2009-574, Part V (HB 945, Part V) provides that the Joint Legislative Education Oversight Committee may study the following topics and report its findings, together with any recommended legislation, to the 2010 General Assembly:

- Consolidation of the General Statutes and Administrative Rules Pertaining to High School Programs Offered at Community Colleges. (Sec. 5.2).
- Social Workers in Schools. (Sec. 5.3).
- Impact of Student Mobility on Academic Performance. (Sec. 5.4).
- Alternative Schools. (Sec. 5.5).
- ABC Bonus Program. (Sec. 5.6).
- State Need-Based Financial Aid. (Sec. 5.7).

This part became effective September 10, 2009. (DA)

Restructure North Carolina Teacher Salary Schedule

S.L. 2009-575, Sec. 3J (HB 836, Sec. 3J) amends S.L. 2009-451 (SB 202) by adding a new section directing the Joint Legislative Education Oversight Committee (Committee) to develop a plan to restructure the North Carolina Teacher Salary Schedule. In developing the restructured salary system, the Committee must consider the following factors:

- Emphasis on increasing beginning teacher salaries to make starting salaries more competitive to attract recent graduates and promote teacher retention.

- Alignment with the newly-adopted North Carolina Professional Teaching Standards.
- Rewards for expert, accomplished teachers for taking on challenging assignments, such as working in high-poverty, low-performing schools.
- Incentives for becoming licensed in high-needs subject areas, such as math and science, and teaching in high-needs areas of the State.
- Research and data that supports improved teaching and learning.
- Optional pathways for salary increases that focus on strategies such as National Board Certified Teachers, Literacy Coach endorsement, and other options that lead to improved student learning.

The Committee may contract for consultant services and is encouraged to seek partnerships with other State and national public and private groups in designing the new compensation system. The Committee must report on the plan to the General Assembly by September 30, 2010.

This section became effective July 1, 2009. (KM)

Referrals to Departments, Agencies, Etc.

Access to North Carolina Virtual Public Schools and Learn and Earn Online

S.L. 2009-451, Sec. 7.33 (SB 202, Sec. 7.33) requires the State Board of Education to report by December 1, 2009, to the Joint Legislative Education Oversight Committee and the Fiscal Research Division on its policy regarding access for nonpublic school children to the North Carolina Virtual Public School Program and Learn and Earn Online and funding sources it authorizes, including tuition for nonpublic school students in the programs.

This section became effective July 1, 2009. (KM)

School Calendar Pilot Program

S.L. 2009-451, Sec. 7.40 (SB 202, Sec. 7.40) directs the State Board of Education (SBE) to establish a school calendar pilot program in the Wilkes County Schools to determine whether and to what extent a local school administrative unit (LEA) can save money by consolidating the school calendar.

The section requires that the Wilkes County Schools calendar for the 2009-2010 school year include a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months. The opening date for students must not be before August 24, 2009.

If the Wilkes County Board of Education adds instructional hours to previously scheduled days under this section, the LEA is deemed to have a minimum of 180 days of instruction, and teachers employed for a 10-month term are deemed to have been employed for the days being made up and must be compensated as if they had worked the days being made up.

The SBE must report to the Joint Legislative Education Oversight Committee by March 15, 2010, on the administration of the pilot program, cost-savings realized by it, and its impact on student achievement.

This section became effective July 1, 2009. (KM)

Funding for High School Students Enrolled in Community Colleges, Colleges, and Universities

S.L. 2009-451, Sec. 8.22 (SB 202, Sec. 8.22) directs the Community Colleges System Office (System Office), with the cooperation and assistance of the Department of Public Instruction (DPI) and the Board of Governors of The University of North Carolina (BOG), to study

issues related to funding for high school students enrolled in community college, college, and university courses. The study must include an analysis of the costs of serving those students by grade level, and an analysis of how the State can most efficiently and effectively pay for those expenditures. The DPI, the System Office, and the BOG must jointly report study results to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2010.

This section became effective July 1, 2009. (KM)

Funding for New Multicampus Colleges

S.L. 2009-451, Sec. 8.23 (SB 202, Sec. 8.23) directs the State Board of Community Colleges (State Board) to study the cost of funding all of the multicampus colleges and to develop a mechanism for ensuring that newly-established multicampus colleges are funded at the same level as existing multicampus colleges. The State Board must further study recommendations for including new multicampus colleges in the continuation budget. The State Board must report the results of its study to the Joint Legislative Education Oversight Committee by February 15, 2010.

This section became effective July 1, 2009. (SK)

University of North Carolina Board of Governors to Study the Feasibility of Implementing a Trimester System

S.L. 2009-574, Part XXII (HB 945, Part XXII) authorizes the Board of Governors of The University of North Carolina (Board) to study the feasibility of converting from a semester system to a trimester system at all institutions, except the University of North Carolina School of the Arts and the North Carolina School of Science and Mathematics.

The purpose of the study is to evaluate whether switching to a trimester system would enable the university to more fully use its campus facilities but also maintain academic and programmatic integrity.

The Board may design a pilot program to explore the advantages and disadvantages to different types of campuses switching to a trimester system. The Board may pick four of the universities with different campuses to participate. The Board may choose the time frame for implementing the pilot and the length of the pilot needed. The Board also may determine what incentives, if any, are needed to encourage faculty and students to participate.

The Board may report its findings and recommendations to the Joint Legislative Education Oversight Committee by December 1, 2009.

This part became effective September 10, 2009. (SK)

Transfer of the University of North Carolina Center for Public Television to the University of North Carolina School of the Arts

S.L. 2009-574, Part XXIII (HB 945, Part XXIII) authorizes the Board of Governors of The University of North Carolina to study the feasibility of transferring the University of North Carolina Center for Public Television to the University of North Carolina School of the Arts and to report its findings and recommendations by March 1, 2010, to the Joint Legislative Education Oversight Committee and to the chairs of the Senate and House of Representatives Appropriations Subcommittees on Education.

This part became effective September 10, 2009. (SI)

Impacts of Raising the Compulsory Attendance Age for Public School Attendance Prior to Completion of a High School Diploma From Sixteen to Seventeen or Eighteen

S.L. 2009-574 (HB 945), Part XXIV, provides that the Board of Governors of The University of North Carolina, in coordination with the Department of Public Instruction and the North Carolina Independent Colleges and Universities, may direct the appropriate entity to study the impacts of raising the compulsory public school attendance age prior to completion of a high school diploma from 16, to 17 or 18. The results of the study may be made to the Joint Legislative Education Oversight Committee prior to May 1, 2010.

This part became effective September 10, 2009. (DC)

State Board of Community Colleges to Study Strategies for Making the Construction Process for Community Colleges More Efficient

S.L. 2009-574, Part XXV, Sec. 25 (HB 945, Part XXV, Sec. 25) authorizes the State Board of Community Colleges (State Board) to review the construction process for community college facilities and to study strategies for making the process more efficient. The study may consider:

- The capacity of the various colleges to construct capital facilities without oversight by the Office of State Construction.
- The appropriateness of increasing the cost threshold at which oversight by the Office of State Construction is required for some or all of the colleges.
- The need for oversight by the Office of State Construction in counties with an effective county review process.

The State Board may report the results of the study to the Joint Legislative Education Oversight Committee by March 30, 2010.

This part became effective September 10, 2009. (KM)

State Board of Community Colleges to Study the Need for Further Purchasing Flexibility

S.L. 2009-574, Part XXVI (HB 945, Part XXVI) provides that the State Board of Community Colleges (State Board) may review the purchasing process for community colleges. The study may consider whether the State Board should have the authority to increase the bid value benchmark for each institution based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reviews.

The State Board may report the results of the study to the Joint Legislative Education Oversight Committee before March 30, 2010.

This part became effective September 10, 2009. (SK)

Feasibility of Converting the Academic Calendar for Most of the Constituent Institutions of the North Carolina Community College System From a Semester System to a Trimester System

S.L. 2009-574, Part XXVII (HB 945, Part XXVII) provides that the State Board of Community Colleges (State Board) may study the feasibility of converting the academic calendar

for most of the community colleges from a semester system to a trimester system. The purpose of the study is to evaluate whether converting to a trimester system would better enable a college to more fully use its campus facilities during the summer while still maintaining the academic and programmatic integrity of the institution.

The State Board may report its findings and recommendations to the Joint Legislative Education Oversight Committee by December 1, 2009.

This part became effective September 10, 2009. (SI)

Chapter 10
Energy

Heather Fennell (HF)

Enacted Legislation

Various Localities Energy Development Incentives

S.L. 2009-95 (SB 52). See **Local Government.**

Add Definition of Biodiesel

S.L. 2009-237 (SB 457). See **State Government.**

Energy-Efficient State Motor Vehicle Fleet

S.L. 2009-241 (HB 1079). See **State Government.**

Energy Savings Contracts' Cap/Program Administration

S.L. 2009-375 (SB 304) increases the cap on certain energy savings contracts from a $100 million aggregate principal cap, to a revolving cap of $500 million outstanding. This act applies to local government and State agency contracts to finance the cost of energy conservation measures, including meter alteration, training, or services that will provide anticipated energy savings with respect to a facility. Under these guaranteed energy savings contracts all payments, except obligations on early termination, are to be made over time, and the energy cost savings are guaranteed to exceed the cost of the contract.

The act also requires providers to conduct a life-cycle cost analysis of each energy conservation measure in a final proposal and requires local governments that enter into energy savings contracts to report the terms of the contract to the State Energy Office.

This act became effective July 31, 2009. (HF)

Energy to Commerce; OEO to Energy

S.L. 2009-446 (HB 1481). See **State Government.**

Coastal Demonstration Wind Turbines

S.L. 2009-451, Sec. 9.14 (SB 202, Sec. 9.14) directs the University of North Carolina (University) to continue its study of the feasibility of establishing wind turbines in the Pamlico and Albemarle Sounds. The University must contract with a third party to implement up to three demonstration turbines and necessary support facilities. The Department of Environment and Natural Resources and the Utilities Commission are directed to facilitate and expedite the project to the extent allowed by law. Wind turbines constructed by a public utility are exempt from the public convenience and necessity requirements of G.S. 62-110.1. Upon completion of a turbine built by a public utility, the Utilities Commission must establish a rider to recover the costs of the project. The University will receive one renewable energy credit for each one megawatt-hour

(MWh) generated by the project and the third party will receive three renewable energy credits for each one MWh generated by the project.

This section became effective July 1, 2009. (HF)

Revolving Loan Fund for Energy Improvements

S.L. 2009-522 (HB 1389) authorizes cities and counties to establish loan programs to finance energy efficiency improvements and the installation of distributed renewable energy sources that are permanently affixed to real property. Cities and counties may use EECBG funds and any other unrestricted funds for the program. The term of the loans may not be greater than 15 years, and the annual interest rate charged on the loans may not exceed 8%. The term "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8.

This act became effective August 26, 2009. (HF)

Incentives for Energy Conservation

S.L. 2009-548 (HB 512). See **Finance.**

Solar Collectors on Residential Properties

S.L. 2009-553 (HB 1387) extends an existing prohibition on restrictive ordinances and covenants that applies to detached single family residences to all residential property. The prohibition does not apply to multi-story condominiums where the descriptions of units in the building's declaration have horizontal boundaries. Restrictive covenants are permitted where a homeowner's association is responsible for the exterior maintenance of a building to provide an installing owner is liable for the installation, maintenance, removal, and any damages caused by a solar collector. The provisions of the act that control restrictive covenants are prospective and do not affect existing restrictive covenants.

This act became effective December 1, 2009. (HF)

Studies

Study Commission on North Carolina's Energy Future

S.L. 2009-574, Sec. 50.1 (HB 945, Sec. 50.1) establishes the Study Commission on North Carolina's Energy Future and directs it to examine issues related to the following:

- Ensuring the State has appropriate statutes and regulations in place to respond to any federal requirement for renewable energy or carbon reduction.
- Examining the cost, availability, and pricing of electric service to ensure an adequate, reliable, and affordable source of energy to all consumers in the State, including the
- examination of fuel mix, impact of conservation on load, and impact of renewable energy on price and reliability.
- Examining utility access to capital finance markets and recommending to the General Assembly necessary changes to the traditional rate-case method of financing major capital projects.

This section became effective September 10, 2009. (HF)

Chapter 11
Environment and Natural Resources

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

Enacted Legislation

Animal Waste Management

Extend Animal Waste Operation Inspection Program

S.L. 2009-84 (HB 461) extends the termination date of the pilot program for the inspection of animal waste management systems from September 1, 2009, to September 1, 2011. Under the pilot program, the Division of Soil and Water Conservation (DSWC) of the Department of Environment and Natural Resources (DENR) performs the required annual inspections of animal operations served by permitted animal waste management systems.

The pilot program initially was created in 1997 in Columbus and Jones Counties, and was expanded in 1999 and again in 2005 to include Brunswick and Pender Counties, respectively. The objective of the pilot program is to determine how DSWC staff can respond more quickly and effectively, with technical assistance, to complaints and problems in order to help farmers achieve compliance with environmental regulations.

This act became effective August 31, 2009. (JM)

Update National Pollutant Discharge Elimination System Permitting for Confined Animal Feeding Operations

S.L. 2009-92 (HB 1175) updates the National Pollutant Discharge Elimination System (NPDES) permitting requirements for Confined Animal Feeding Operations by amending citations in the General Statutes to reflect changes to the Code of Federal Regulations that resulted from the court decision in *Waterkeeper Alliance et al. vs. U.S. Environmental Protection Agency*, 399 F.2d 486 (2d Cir. 2005):

- Removes the 90-days notice requirement by the Department of Environment and Natural Resources (DENR) for a regulated animal facility to apply for a permit.
- Provides that an owner or operator of an animal waste management system or dry litter poultry operation that must be permitted pursuant to federal regulations must apply for an individual or general NPDES permit and may not discharge into the waters of the State except in compliance with the NPDES permit.
- Provides that animal waste management systems that are not required to be permitted pursuant to federal regulations must be designed, constructed, and operated so that the animal operation served by the system does not pollute the waters of the State except as may result from a storm event more severe than the 25-year, 24-hour storm.
- Adds new provisions that require:
  - Existing animal waste management systems permitted under the federal regulations to be designed, constructed, maintained, and operated in accordance with those federal regulations so that the animal operation served does not pollute the waters of the State except as may result from rainfall from a storm event more severe than the 25-year, 24-hour storm.
  - New animal operations or dry litter poultry facilities that are required must be permitted under the federal regulations must be designed, constructed,

maintained, and operated so that there is no discharge of pollutants to the waters of the State.

This act became effective June 11, 2009. (JM)

Climate Change

Extend Legislative Commission on Global Climate Change

S.L. 2009-306 (SB 835) extends the term of the Legislative Commission on Global Climate Change (LCGCC) from October 1, 2009, to October 1, 2010, and provides for submission of a final report, including findings and recommendations, to the General Assembly and the Environmental Review Commission on or before October 1, 2010, at which time the LCGCC will terminate.

This act became effective July 17, 2009. (JM)

Coastal Issues

Address Erosion Control Issues

S.L. 2009-479 (HB 709) prohibits the Coastal Resources Commission (CRC) from ordering the removal of a permitted sandbag structure in a community that is actively pursuing a beach nourishment project or an inlet relocation project on or before August 26, 2009. This moratorium would not prohibit the CRC from:

- Granting permit modifications to allow the replacement, within the originally permitted dimensions, of sandbag structures that have been damaged or destroyed.
- Requiring the removal of sandbag structures installed in violation of coastal resources laws.
- Requiring that a sandbag structure that has been modified in violation of coastal resources laws be brought back into compliance with permit conditions.
- Requiring the removal of a sandbag structure that no longer protects an imminently threatened road and associated right-of-way or an imminently threatened building and associated septic system.

The act also directs the CRC, in consultation with the Division of Coastal Management and the Division of Land Resources, of the Department of Environment and Natural Resources, and the Coastal Resources Advisory Commission, to conduct a study of the feasibility and advisability of the use of a terminal groin as an erosion control device at the end of a littoral cell or the side of an inlet to limit or control sediment passage into the inlet channel. A littoral cell is any section of coastline that has its own sediment sources and is isolated from adjacent coastal reaches in terms of sediment movement. The CRC must consider all of the following in the terminal groin study:

- Scientific data regarding the effectiveness of terminal groins constructed in North Carolina and other states in controlling erosion, including consideration of the effect of terminal groins on adjacent areas of the coastline.
- Scientific data regarding the impact of terminal groins on the environment and natural wildlife habitats.
- Information regarding the engineering techniques used to construct terminal groins, including technological advances and techniques that minimize the impact on adjacent shorelines.
- Information regarding the current and projected economic impact to the State, local governments, and the private sector from erosion caused by shifting inlets, including loss of property, public infrastructure, and tax base.

- Information regarding the public and private monetary costs of the construction and maintenance of terminal groins.
- Whether the potential use of terminal groins should be limited to navigable, dredged inlet channels.

The CRC must hold at least three public hearings on the use of terminal groins and report its findings and recommendations to the Environmental Review Commission and the General Assembly on or before April 1, 2010.

This act became effective August 26, 2009. The moratorium on the removal of temporary erosion control structures expires September 1, 2010. (JH)

Fisheries

Implement Shellfish Fishery Management Plan Recommendations

S.L. 2009-433 (SB 107) enacts the recommendations of the Marine Fisheries Commission's (MFC) Oyster and Hard Clam Fishery Management Plan, as follows:

- Authorizes the sale of oysters or clams from a hatchery or aquaculture operation to certain persons or facilities for the purpose of further growth out of the shellfish.
- Removes the personal use exemption for taking shellfish from the statute requiring a shellfish license for taking shellfish and provides that shellfish may be taken without a license for personal use in quantities established by rules of the MFC.
- Authorizes the MFC to limit the number of acres of shellfish leases that may be held in any particular area. Shellfish cultivation lease training requirements also apply to persons who acquire leases by transfer.
- Clarifies that the limitation on the number of acres of shellfish leases that may be held by a person includes acres held by a corporation in which the person holds an interest.
- Reduces the term of a shellfish bottom lease from ten years to five years.
- Updates the process for managing public shellfish beds, removing the requirement that designation of a seed oyster management area begin with a petition from a board of county commissioners.
- Repeals the statutory requirement that the Department of Environment and Natural Resources post signs on oyster rocks that prohibit the taking of shellfish from the rocks by methods that would disturb or damage the shellfish.

This act became effective August 7, 2009. (JH)

Miscellaneous

Aquarium Satellite Areas Funding

S.L. 2009-14 (HB 628) authorizes capital improvement projects related to the construction of the North Carolina Aquarium Pier at Nags Head to be funded with receipts or other non-General Fund sources up to a maximum aggregate cost of $25 million. It also directs the transfer of any remaining funds not used by the Department of Environment and Natural Resources (DENR) for a stormwater pilot project to the North Carolina Aquariums Fund and provides that if funds are made available from the federal stimulus program, then the federal funds must be used before the funds are transferred from DENR to the North Carolina Aquariums Fund.

This act became effective April 14, 2009. (MM)

Zoo and Zoo Funds Modifications

S.L. 2009-329 (SB 332) creates new laws and amends existing laws concerning the North Carolina Zoological Park, as follows:

- Modifies the purchase and contract authority of the Department of Environment and Natural Resources (DENR) exercised on behalf of the Zoological Park (Zoo).
- Expands the Zoo's Umstead Act exemption.
- Requires DENR to work with the Zoo on outstanding procurement and contract issues, information technology issues, and any other administrative concerns.
- Requires the Secretary of Environment and Natural Resources to review the current Memorandum of Understanding (MOU) between DENR and the North Carolina Zoological Society and to revise or replace the MOU, as necessary.
- Establishes the North Carolina Zoological Park Funding and Organization Study Committee. The Committee is required to report to the 2010 Regular Session of the 2009 General Assembly and the Environmental Review Commission, on or before May 1, 2010, and then terminate on that date.

The act also provides for annexation of certain property owned by the North Carolina Zoological Society, placing it in the satellite corporate limits of the City of Asheboro.

This act became effective July 24, 2009. (JLM)

Promote Mitigation Banks

S.L. 2009-337 (SB 755) makes several changes relating to compensatory mitigation and nutrients offsets as follows:

- Makes technical and clarifying changes related to S.L. 2008-152 (Promote Private Compensatory Mitigation).
- Provides that under certain circumstances, applicants for compensatory riparian buffer mitigation, other than the North Carolina Department of Transportation (DOT) and government entities, must seek the compensatory riparian buffer mitigation from a compensatory mitigation bank before seeking mitigation from the Ecosystem Enhancement Program (EEP).
- Provides that nutrient offset projects must be consistent with rules adopted by the Environmental Management Commission and located in the same hydrologic area in which the associated nutrient loading takes place.
- Provides that under certain circumstances, applicants for nutrient offset credits, other than the Department of Transportation and government entities, must seek the nutrient offset credits from a nutrient offset bank before seeking nutrient offset credits from EEP.
- Directs DENR to study whether the preferences for compensatory mitigation banks create a likelihood that the EEP will be unable to recoup investments made in certain mitigation and nutrient offset projects.
- Makes other clarifying and conforming changes.

This act became effective July 24, 2009. (JH)

Extend Certain Development Approvals

S.L. 2009-406 (SB 831), as amended by S.L. 2009-484, Sec. 5.1 (SB 838, Sec. 5.1), S.L. 2009-550, Sec. 5.2 (HB 274, Sec. 5.2), and S.L. 2009-572 (HB 1490), provides that the running of the period of the development approval is suspended for any of the following development approvals that are current and valid at any point from January 1, 2008, through December 31, 2010:

- Environmental impact statements and findings of no significant impact required pursuant to the State Environmental Policy Act.
- Erosion and sedimentation control plan approvals granted by the North Carolina Sedimentation Control Commission or local government.
- Coastal Area Management Act (CAMA) major permits, minor permits, and any other permit issued under CAMA.
- Water and wastewater permits issued by the Department of Environment and Natural Resources (DENR) or local health departments.
- Building permits issued under the State Building Code.
- Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.
- Stream origination certifications and water quality certifications issued by DENR.
- Air quality permits issued by the Environmental Management Commission.
- Approval of sketch plans, preliminary plats, plats regarding subdivision of land, site specific development plans or phased development plans, development agreements, or building permits issued by cities or counties.
- Certificates of appropriateness issued by a preservation commission of a city.

The suspension of the running of the period of the development approval may not be implemented to do any of the following:

- Extend any permit or approval issued by the United States.
- Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.
- Shorten the duration that any development approval would have had in the absence of this act.
- Prohibit the granting of such additional extensions as are provided by law.
- Affect any administrative consent order issued by DENR in effect or issued at any time from the effective date of this act to December 31, 2010.
- Affect the ability of a government entity to revoke or modify a development approval pursuant to law.
- Modify any requirement of law necessary to retain federal delegation by the State of the authority to implement a federal law or program.

The holder of a development approval can voluntarily relinquish the development approval.

This act became effective August 5, 2009. If developmental approvals that expired during the period beginning January 1, 2008, through August 5, 2009, are revived by operation of this act, and (i) in reliance upon the expiration of water or sewer capacity was reallocated to other development projects prior to the August 5, 2009, and (ii) there is no longer sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval, this act may not be construed to revive any vested right to the water or sewer allocation associated with the revived development approval, but the holder of the revived development approval may request new capacity and shall be given first priority if additional supply or treatment capacity becomes available. This act does not revive vested rights to water or sewer allocation associated with a development approval if the supply or capacity was reallocated prior to August 5, 2009, and there is not sufficient supply or capacity to accommodate the development project. If a development approval is revived, but the supply or capacity is not sufficient, the person holding the development approval must be given first priority for any additional supply or capacity that becomes available. (JH)

Amendments to Environmental Laws 2009

S.L. 2009-484 (SB 838) amends and makes technical corrections to various environmental and natural resources laws, as follows:

- Requires all laboratories doing business in the State to report by electronic submission blood lead test results and environmental lead test results for children less than six years of age and for individuals whose ages are unknown at the time of testing.
- Clarifies the permit fee structure for temporary food establishments, pushcarts, and mobile food units to provide that a fee of $75 is required for each permit issued. Permits authorize temporary establishments to operate for up to 15 days. Permits for other non-temporary establishments authorize operation for one year, and the fees for non-temporary establishments are assessed annually.
- Extends the term of the fee structure for nutrient offset payments established pursuant to S.L. 2007-438 (Nutrient Offset Program Transition) from September 1, 2009, to September 1, 2010, to provide the Department of Environment and Natural Resources (DENR) additional time to transition the nutrient offset program from a fee-based to an actual cost structure.
- Amends the solid waste disposal tax statutes to streamline the distribution of proceeds to local governments that are served by a regional solid waste management authority.
- Repeals the requirement that seasonal State Park employees wear a uniform vest during working hours.
- Delays the effective dates for various laws that govern the management of discarded computer equipment and discarded televisions to July 1, 2010.

The following changes became effective January 1, 2010:

- Amends the annual reporting date for the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee from May 1 to October 1.
- Removes the requirement that the Parks and Recreation Authority provide a progress report by March 15 of each year.
- Modifies the frequency by which the Secretary of Environment and Natural Resources is required to maintain and revise a list of grants awarded with funds from the Natural Heritage Trust Fund from bi-annual to annual, and changes the reporting date from within 30 days after each revision to on or before October 1 of each year.
- Repeals the requirement that each State department, institution, agency, community college, and local school administrative unit report to the Division of Pollution Prevention and Environmental Assistance of DENR, the amounts and types of materials and supplies with recycled content purchased during the previous fiscal year.

Except as otherwise noted above, this act became effective August 26, 2009. (JM)

Mountain Resources Planning

S.L. 2009-485 (SB 968) creates a 17-member Mountain Resources Commission (MRC) as a permanent body located administratively in the Department of Environment and Natural Resources. The MRC's purpose is to encourage quality growth and development, while preserving the natural and cultural resources of the mountain region of Western North Carolina. The MRC is directed to:

- Identify and evaluate issues affecting mountain resources.
- Coordinate with local and regional efforts to address threats to mountain resources.
- Provide a forum for discussing issues affecting mountain resources.
- Promote communication, coordination, and education among stakeholders.
- Collect research and information from North Carolina and other states regarding State and regional approaches to coordinating provision of infrastructure for the protection of resources and encouraging quality growth that protects mountain resources.

- Determine whether new strategies would be helpful to address pressures on mountain resources.
- Provide guidance and make recommendations to State, local, and federal legislative and administrative bodies for the use, stewardship, and enhancement of mountain resources.

The act also creates the Mountain Area Resources Technical Advisory Council to consist of not more than 13 members to be appointed by the MRC, for the purpose of providing assistance to the MRC in an advisory capacity.

This act became effective August 26, 2009. (JM)

Solid / Hazardous Waste

Ban Certain Single-Use Bags

S.L. 2009-163 (SB 1018) prohibits retailers in certain areas of the State from providing customers with plastic bags unless the bag (1) is reusable, or (2) is used solely to hold sales of otherwise unpacked portions of fresh:

- Fish or fish products.
- Meat or meat products.
- Poultry or poultry products.
- Produce.

The act provides that the substitution of paper bags is permitted if the bag is a recycled paper bag and the retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (1) a cash refund; (2) a store coupon or credit for general store use; or (3) a value or reward under the retailer's customer loyalty or rewards program for general store use.

Violations of the act are punishable as a Class 1 misdemeanor, and subject to the following penalties:

- $100 for a first violation.
- $200 for a second violation within any 12-month period.
- $500 for subsequent violations within any 12-month period.

The provisions of the act only apply to islands or peninsulas bounded on the east by the Atlantic Ocean and on the west by a coastal sound, which are within counties that have a barrier island or barrier peninsula that both: (1) has permanent inhabitation of 200 or more residents and is separated from the mainland by a sound; and (2) contains either a National Wildlife Refuge or a portion of a National Seashore (Dare, Currituck, and Hyde Counties).

This act became effective September 1, 2009, and applies to retail sales made in the affected counties on or after that date. (JLM)

Brownfields Property Notifications

S.L. 2009-181 (HB 1388) amends public notice requirements set forth in the Brownfields Property Reuse Act for prospective development of a brownfields site as follows:

- Removes the requirement that a prospective developer file a copy of the summary of the Notice of Intent to Redevelop a Brownfields Property (NOI) with the Codifier of Rules, and removes the requirement that the summary be published in the North Carolina Register.
- Requires that a prospective developer mail or deliver copies of the summary of the NOI to each owner of property contiguous to the brownfields property.
- Directs the Department of Environment and Natural Resources to mail notices of public meetings for brownfields agreements to each owner of property contiguous to

the brownfields property in addition to all other persons who requested the public meeting.

- Provides that the date on which the 30-day public comment period begins is the latest of the dates that the summary of the NOI is published in a newspaper of general circulation, posted conspicuously at the brownfields location, or mailed or delivered to contiguous property owners.

This act became effective October 1, 2009, and applies to NOIs and summaries of NOIs submitted on or after that date. (JLM)

Expand Permissible Uses of the Solid Waste Management Trust Fund

S.L. 2009-451, Sec. 13.3A (SB 202, Sec. 13.3A) expands the purposes for which the Solid Waste Management Trust Fund may be used to include funding for the activities of the Division of Pollution Prevention and Environmental Assistance, of the Department of Environment and Natural Resources.

This section became effective July 1, 2009. (JLM)

Change Distribution of Scrap Tire Net Tax Proceeds

S.L. 2009-451, Sec. 13.3B (SB 202, Sec. 13.3B) changes the distribution of the proceeds collected from the tax imposed on sales of new tires (the Scrap Tire Disposal Tax). The new distribution formula for the net proceeds is as follows:

- 8% to the Solid Waste Management Trust Fund.
- 17% to the Scrap Tire Disposal Account.
- 2.5% to the Inactive Hazardous Sites Cleanup Fund.
- 2.5% to the Bernard Allen Memorial Emergency Drinking Water Fund.
- 70% among the counties on a per capita basis according to the most recent annual population estimates.

This section became effective July 1, 2009. (JLM)

Increase Cap for Voluntary Remedial Actions at Inactive Hazardous Disposal Sites/Department of Environment and Natural Resources Monitoring Fee

S.L. 2009-451, Sec. 13.3C (SB 202, Sec. 13.3C) increases the cap on costs that an owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action plan for inactive hazardous substance or disposal sites may be required to pay from $3 million to $5 million. The cost cap does not apply to costs incurred in development of a remedial action plan. The section also requires that such a person or entity pay, in addition to the cost of implementing the remedial action program, a fee of $1,000 to be used for the Department of Environment and Natural Resource's cost of monitoring and enforcing the program.

This section became effective July 1, 2009, and applies to: (1) Any voluntary remedial action program that is developed or implemented on or after that date; and (2) any voluntary remedial action program that is pending as of that date. (JLM)

Use of Solid Waste Disposal Tax Proceeds

S.L. 2009-451, Sec. 13.3E (SB 202, Sec. 13.3E) amends the allowable uses of the proceeds of the solid waste disposal tax to provide that of the portion of the proceeds distributed to the Inactive Hazardous Sites Cleanup Fund (50% of the tax proceeds), up to 7% must be used to fund administrative expenses related to the assessment and remediation of inactive hazardous waste sites. The section also repeals the requirement that 7% of the funds credited be used to fund staff to administer contracts for the assessment and remediation of pre-1983 landfills.

This section became effective July 1, 2009. (JLM)

Dry-Cleaning Solvent Act Amendments

S.L. 2009-483 (SB 700) makes changes to the Dry-Cleaning Solvent Cleanup Act (DSCA) as follows:

- Extends the sunset dates applicable to: (1) Implementation of DSCA from January 1, 2012, to January 1, 2022; (2) collection of the Solvent Taxes from January 1, 2010, to January 1, 2020; and (3) transfer of the dry-cleaning sales and use tax to the DSCA Fund from June 30, 2010, to June 30, 2020.
- Allows the use of State and local land-use controls (e.g., groundwater use restrictions, ordinances) in lieu of land-use restrictions on property in the area of a contaminated dry-cleaning site. Land-use controls may not be used for properties on which a dry-cleaning facility is or was located that was the source of contamination. Land-use controls must adequately protect human health and the environment, be included in a Notice of Dry-Cleaning Solvent Remediation, and filed in the office of the register of deeds of the county or counties in which the property in question is located.
- Amends public notice requirements applicable to a proposed cleanup of a contaminated dry-cleaning site by: (1) Adding a requirement that a summary of the Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site be mailed to each owner of property within the contamination site or contiguous to it; (2) removing the requirement to publish the summary of the Notice of Intent in the North Carolina Register; (3) reducing the minimum public comment period from 60 days to 30 days; and (4) requiring minutes of any public meeting held on a proposed dry-cleaning solvent remediation agreement to include written comments received during the meeting.
- Allows the DSCA Fund to pay for cleanups of dry-cleaning contamination discovered on properties owned by the State if the contamination at the State-owned site was not caused by the State.

This act became effective August 26, 2009. (JLM)

Residential Lead-Based Paint Hazards/Renovations

S.L. 2009-488 (HB 1151) authorizes the Commission for Public Health (Commission) to establish a State program within the Department of Health and Human Services to regulate persons and firms that perform lead-based paint renovation work in accordance with United States Environmental Protection Agency (EPA) requirements. The Commission is directed to adopt rules to implement the provisions of the law.

The act establishes a new Article 19B "Certification and Accreditation of Lead-Based Paint Renovation Activities" in the statutes governing public health. The Article requires that renovations performed for compensation in certain residential housing and in child-occupied facilities be performed by certified renovators or certified renovation firms. The Article prohibits non-certified renovators or firms from performing renovation activities, conducting dust- clearing

sampling, or conducting cleaning verification. Certified renovation firms and dust- sampling technicians must renew their certification annually. Certified renovators must renew their certification every five years. The Commission is directed to adopt rules governing the qualifications, training, and experience required for certification.

Training providers and training courses must be annually accredited in accordance with rules adopted by the Commission.

The maximum fees that may be used for the administration of the Article are as follows:

- $150 for accreditation or reaccreditation of a training provider.
- $2,000 for accreditation or reaccreditation of initial or refresher courses (per course).
- $300 for certification or recertification of a firm.
- $150 for certification or recertification of a dust sampling technician.

The fees do not revert to the General Fund at the end of the fiscal year. Accreditation fees do not apply to local or State governmental agency personnel, Indian tribes, or nonprofit training providers.

The act also amends the law governing penalties for violations of the law, providing that an administrative penalty may be imposed for violation of the new Article or any rules adopted pursuant to it and may not exceed $750 for each day the violation continues.

This act became effective January 1, 2010. (JM)

Disposal of Pesticide Containers

S.L. 2009-499 (HB 760) exempts plastic containers intended for use in the sale or distribution of pesticides from the ban on disposal of plastic containers in landfills. Specifically, the ban prohibits the disposal in landfills of recyclable rigid plastic containers that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. In addition to plastic containers intended for use in the sale or distribution of pesticides, plastic containers intended for use in the sale or distribution of motor oil are exempt from the ban.

This act became effective October 1, 2009. (JLM)

Parks and Public Spaces

Authorize Grandfather Mountain as State Park

S.L. 2009-12 (SB 89) authorizes the Department of Environment and Natural Resources to add Grandfather Mountain to the State Parks System. The State acquired property for the park on June 4, 2009.

This act became effective March 31, 2009. (JLM)

Condemnation of Conservation Easements

S.L. 2009-439 (SB 600) generally requires public condemnors acting to exercise the power of eminent domain over property encumbered by a conservation easement to demonstrate that there is no prudent and feasible alternative to condemnation of the property encumbered by the conservation easement. The act also directs how holders of conservation easements are to be compensated in the event of condemnation.

Public condemnors, with certain exceptions, are required to include in the complaint filed a statement alleging that there is no prudent and feasible alternative to condemnation of the property in question. If the holder of an easement contests a condemnation action on the basis that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists, a judge will hear and determine whether or not a prudent and feasible alternative existed. If the judge determines that a prudent and feasible alternative did exist, the

court will be required to dismiss the condemnation action and award costs to the easement holder.

The following exceptions apply:

- Except with respect to the compensation provisions described below, the provisions of the act will not be applicable to circumstances in which the terms of the easement provide an express exception for uses that may be subject to condemnation in the future, or circumstances in which the condemnation action would not extinguish, restrict, or impair the property rights of the easement holder. In addition, the provisions are not applicable to actions commenced for certain public enterprise activities. Condemnors exempt under these circumstances, however, still will be obligated to make reasonable efforts (after completion of the project for which the condemnation was undertaken) to return the property to the condition in which the property existed prior to condemnation to the extent practicable.
- A judicial determination concerning whether a prudent and feasible alternative existed is not required in cases involving the North Carolina Department of Transportation or the Turnpike Authority, where a review of the action was conducted pursuant to the State Environmental Policy Act or the National Environmental Policy Act, or under a provision of the federal Department of Transportation Act. That last provision stipulates that the Federal Highway Administration and other United States Department of Transportation agencies cannot approve the use of land from publicly-owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless both the following conditions apply:
  - There is no feasible and prudent alternative to the use of land.
  - The action includes all possible planning to minimize harm to the property resulting from use.

The act directs that the court first must determine the value of the property taken as a whole, unencumbered by the conservation easement, and then apportion the award between or among any holders of the conservation easement and any owners of the property as provided by the easement agreement or, if the agreement fails to address the issue, as the judge finds equitable based upon evidence to include the opinion of a real estate valuation expert with experience in the valuation of conservation easements.

This act became effective October 1, 2009, and applies to condemnation actions filed on or after that date. (BG/JLM)

State Nature and Historic Preserve Additions and Deletions

S.L. 2009-503 (HB 1196) dedicates and accepts certain properties as part of the State Nature and Historic Preserve (Preserve), and removes certain lands from the Preserve. Specifically, the act:

- Adds Bear Paw State Natural Area and Deep River State Trail, to the Preserve.
- Changes the designation of Mountain Bog State Natural Area to Pineola Bog State Natural Area and Sugar Mountain State Natural Area.
- Excepts from dedication and/or deletes from the State Parks System several parcels of land proposed for disposition in the following units: Crowders Mountain State Park, Eno River State Park, Chimney Rock State Park, and the Mountains-to-Sea Trail. These are small parcels and their disposition is to improve the management of the units, to allow for existing road relocations, or to allow for utility easements.

This act became effective August 26, 2009. (JLM)

Water Quality/Quantity/Groundwater

Capacity Use Areas Enforcement

S.L. 2009-134 (HB 1399) increases the caps on civil penalties that may be assessed for violations of capacity use area laws as follows:

- The cap on civil penalties for violation of capacity use area laws is increased from $250 to $1,000.
- For willful violations of capacity use area laws, the cap on civil penalties is increased from $250 to $1,000 per day for each day of violation.

This act became effective June 19, 2009, and applies to violations that occur on or after that date. (JH)

Restore Water Quality in Jordan Reservoir

S.L. 2009-216 (HB 239), as amended by S.L. 2009-484 (SB 838), extends the compliance date for the Jordan Water Supply Nutrient Strategy for Wastewater Discharge Requirements rule. Under the Wastewater Discharge Rule, as adopted by the EMC, each existing wastewater discharger with a permitted flow of greater than or equal to 100,000 gallons per day must limit its total nitrogen discharge as provided under the rule no later than calendar year 2014. This act extends the compliance date by two years, to calendar year 2016.

The act disapproves the Jordan Water Supply Nutrient Strategy for Stormwater Management of Existing Development rule, which requires that levels of nitrogen and phosphorus loading from different areas of the Jordan watershed be reduced by certain percentages by certain dates and that local governments in the Jordan watershed must develop long-range plans to implement nutrient load reductions from existing development, including overall compliance timeframes. This act provides an alternative process for managing stormwater from existing development in the Jordan watershed, and directs the Department of Environment and Natural Resources (DENR) to maintain an ongoing program to monitor water quality in each arm of the Jordan Reservoir. On March 1, 2014, and every three years thereafter, DENR will report the results of monitoring to the Environmental Review Commission.

This act became effective June 30, 2009. The provisions of S.L. 2009-484 (SB 838) affecting this act became effective August 26, 2009. (JH)

Stormwater Controls for Compost

S.L. 2009-322 (HB 1100) directs the Department of Environment and Natural Resources (DENR) to establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations permitted by the Division of Water Quality (DWQ) and the Division of Waste Management (DWM) of DENR. These practices, processes, and standards are to be developed to protect water quality by controlling and containing stormwater associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

The act also directs DENR to establish revised water quality permitting procedures for the composting industry to identify the various circumstances that determine which water quality permit is required for various composting activities. The determination must include consideration of the economic impact of regulatory decisions.

The act requires DENR to form a Compost Operation Stakeholder Advisory Group to assist it in its work.

During phase-in of the new practices, processes, and standards, DENR must handle permits for composting facilities as follows:

- DWQ issues interim water quality permit extensions to all composting facilities applying for a water quality permit renewal.
- DWQ will work with facilities renewing permits issued by DWM prior to the end of the phase-in period but operating without the appropriate water quality permits will, on a case-by-case basis to establish appropriate permit coverage.
- New water quality permit applications filed after July 1, 2009, will be handled on a case-by-case basis.

On or before January 1, 2011, DENR must establish standard stormwater control best management practices and standard process water treatment processes or performance standards, including standard methods for the reduction in volume for both of these waters. Also, on or before January 1, 2011, DENR must begin the phase-in of the revised water quality permitting procedures for the composting industry. Complete phase-in of the revised water quality permitting procedures must be accomplished on or before October 1, 2012. Water quality permits for the composting industry must include a re-opener clause that may be used to revise permit conditions to reflect the results of the stakeholder process.

This act became effective July 17, 2009. (JM)

Clean Marinas/Pumpout Stations

S.L. 2009-345 (HB 1378) requires owners or operators of certain marinas (those that have docking facilities and have more than 10 wet slips for vessels of 26 feet or more that have marine sanitation devices (MSDs)) located on coastal waters designated as No Discharge Zones (NDZs) by the United States Environmental Protection Agency (EPA), or located in jurisdictions that have adopted a resolution to petition EPA for a NDZ, to:

- Install or maintain an operational pumpout facility at the marina; or
- Contract with an outside service provider to provide pumpout services at the marina on a regular basis.

The act also:

- Directs the Department of Environment and Natural Resources (DENR) to establish appropriate criteria for pumpout facilities and services.
- Requires owners of vessels with MSDs to maintain records of pumpout dates – violation of the provision is punishable as a Class 3 misdemeanor.
- Prohibits the discharge of treated or untreated sewage into coastal waters – violation of the provision is punishable as a Class 1 misdemeanor and subject to assessment of a civil penalty.
- Requires marina owners or operators who know of unlawful discharges to report them to law enforcement or be subject to assessment of civil penalties.
- Authorizes wildlife inspectors, marine fisheries inspectors, sworn law enforcement officers with jurisdiction, and U.S. Coast Guard personnel to enforce the provisions of the act.
- Directs the Division of Coastal Management of DENR to implement a pilot program in New Hanover County to begin phasing in the provisions of this act. DENR must report to the Environmental Review Commission (ERC) by December 1, 2009, regarding the design of the pilot program and must implement the pilot program on or before January 1, 2010. DENR also must report to the ERC by March 1, 2010, regarding the implementation of the pilot project.

The pilot program provisions of the act became effective July 27, 2009. The remaining provisions become effective July 1, 2010, and apply to offenses committed on or after that date. (JLM)

Division of Water Quality/Bridge Culvert Standards

S.L. 2009-478 (HB 569) directs the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources to allow the use of three-sided, open-bottom, or bottomless culverts designed, constructed, and installed so as to meet the following requirements:

- Adheres to professional engineering standards and sound engineering practices.
- Minimizes the erosive velocity of water to the extent practicable.
- Has an inside that is greater than or equal to 1.2 times the bankfull width of the spanned waterbody. (Bankfull width is defined as the width of the stream where over-bank flow begins during a flood event.)

The act also provides that DWQ may not limit use of three-sided, open-bottom, or bottomless culverts to locations where they must be tied into bedrock and that culverts authorized under this act may be used only on private property and may not be transferred to, or operated or maintained by, the Department of Transportation.

This act became effective August 26, 2009. (JH)

Promote Water Use Efficiency

S.L. 2009-480 (HB 1236) authorizes trade or professional organizations representing commercial car washes to establish voluntary water conservation and water use efficiency certification programs.

A unit of local government that provides public water service or a large community water system must recognize and credit a commercial or industrial water user that has met the standards of a certification program for at least six months prior to the most recent extreme drought designation for water conservation achieved under the program. Car washes certified under the program will not be required to reduce consumption more than any other class of commercial or industrial water users during a water shortage emergency.

If a unit of local government that provides public water service or a large community water system believes that a certification program or a person certified under a certification program is not complying with the terms and standards of the certification program, it may refuse to recognize and credit conservation measures.

The certification program requires a determination by the Department of Environment and Natural Resources that the program uses industry best management practices for the efficient use of water and achieves year-round reductions in water use.

A water conservation and water use efficiency certification may be issued only to a person who demonstrates that water use from their water consuming processes is reduced by and maintained at 20% or more below the yearly average water use for the calendar year preceding application for certification. In order to receive and maintain certification and to ensure compliance, a person must have their facility inspected on an annual basis by a licensed plumbing contractor.

This act became effective January 1, 2010. (JH)

Improve Upper Neuse Basin Water Quality

S.L. 2009-486 (SB 1020) makes the following provisions for improving water quality in the Upper Neuse River Basin:

- Directs the Environmental Management Commission (EMC) to encourage local governments, landowners, and others to develop, adopt, and implement policies and practices to reduce the runoff and discharge of nitrogen, phosphorus, and sediment into the surface waters and drinking water supply reservoirs of the Upper Neuse River Basin before it adopts permanent rules to implement the nutrient management

strategy for Falls Lake. In its permanent rules, the EMC must provide credit to local governments, landowners, and others who implement policies and practices after January 1, 2007, to reduce runoff and discharge of nutrients and sediment in the Basin.

- Extends the deadline for the EMC to develop and implement a nutrient management strategy for Falls Lake from July 1, 2009, to January 15, 2011, directs the EMC to adopt temporary rules concurrent with permanent rules by January 15, 2011, and requires that the permanent rules on new development be implemented no more than 30 months after the rules become effective.
- Authorizes compensatory mitigation for riparian buffer loss and nutrient offset purchases in the Falls Lake Watershed, provided the mitigation or offset is performed or purchased within that watershed.
- Requires additional sedimentation and erosion control standards for land-disturbing activities in the Falls Lake Watershed.
- Requires the Sedimentation Control Commission to adopt rules for the control of erosion and sedimentation resulting from land-disturbing activities in the Falls Lake Watershed on or before December 31, 2011.
- Directs the Department of Environment and Natural Resources (DENR), in consultation with the EMC, to identify improvements needed in the design, operation, and siting of septic tank systems in order to reduce nutrient loading from those systems to Falls Lake. DENR must report its findings and recommendations to the Commission for Public Health and the Environmental Review Commission by March 1, 2010.

The additional standards for land-disturbing activities in the Upper Neuse River Basin became effective January 1, 2010, apply to land-disturbing activities begun on or after that date, and expire on the date that rules for the control of erosion and sedimentation in the Falls Lake Watershed adopted pursuant to this act become effective. The remainder of this act became effective August 26, 2009. (JH)

Studies

New / Independent Studies / Commissions

Whether Current Regulation of the Land Application of Septage and Sludge Adequately Protects Human Health and the Environment

S.L. 2009-574, Sec. 39 (HB 945, Sec. 39) directs the Department of Agriculture and Consumer Services (DACS) to study the extent to which septage and sewage sludge is being spread or applied to land in the State and whether current regulations are adequate to protect people, domestic animals, and the environment. In particular DACS is to:

- Work with local soil and water conservation districts to determine the total volume of septage and sewage sludge being spread by county and to post maps showing (1) where it is being spread; (2) the quantities being spread; and (3) the source of the septage and sewage being spread. This information is to be shared with the county commissioners of each county.
- Consider whether the pesticide program administered by DACS should be expanded to regulate the transportation and application of all wastes that may include waste that otherwise would be considered hazardous if not commingled with domestic sewage.

- Determine what fees would be necessary to establish a regulatory program that would include sufficient testing to be sure the sludge is free of pathogens and heavy metals so that runoff and/or airborne residue would not negatively impact human health or the environment.
- Work with the University of North Carolina to identify cost effective alternatives to land application of sludge that protect health and farmland.

DACS may report its findings, including any recommendations and any legislative proposals or administrative actions, to the General Assembly on or before May 1, 2010. (MM)

Legislative Study Commission on Water and Wastewater Infrastructure

S.L. 2009-574, Sec. 43 (HB 945, Sec. 43) creates the Legislative Study Commission on Water and Wastewater Infrastructure (Commission), consisting of 17 members. The Co-Chairs of the Commission are appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Commission may meet at any time upon the joint call of the Co-Chairs.

The Commission is directed to focus on the development of an on-going process to identify statewide water and wastewater infrastructure needs and to improve the delivery of State-appropriated water and wastewater programs.

The Commission must submit an interim report to the 2010 Regular Session of the 2009 General Assembly on or before May 1, 2010. The Commission must submit a final report on its findings and recommendations no later than the convening of the 2011 Regular Session of the General Assembly. The Commission will terminate upon the earlier of the filing of its final report or the convening of the 2011 General Assembly.

The act also establishes guidelines for vacancies, quorum, staffing, per diem, consultants, and other provisions that conform to the provisions of similar appointed bodies.

This section became effective September 10, 2009. (MM)

Referrals to Existing Commissions/Committees

Issues Related to the Use of Intrabasin and Interbasin Netting by Contract among Water Utilities

S.L. 2009-574, Sec. 6.2 (HB 945, Sec. 6.2) authorizes the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, to study the feasibility and environmental impact of intrabasin and interbasin netting of water withdrawals and discharges by contract among water systems subject to regulation by the Utilities Commission.

This section became effective September 10, 2009. (MM)

Continue Study of Water Allocation Issues

S.L. 2009-574, Sec. 6.3 (HB 945, Sec. 6.3) provides that the Environmental Review Commission (ERC) may continue to study those topics identified for further research and study in the 2008 Report of the Water Allocation Study to the ERC.

This section became effective September 10, 2009. (MM)

Desirability and Feasibility of Consolidating the State's Environmental Policy-making, Rule-making, and Quasi-Judicial Functions into One Commission

S.L. 2009-574, Sec. 6.4 (HB 945, Sec. 6.4) provides that the Environmental Review Commission may study the desirability and the feasibility of consolidating the State's environmental policy-making, rule-making, and quasi-judicial functions into one comprehensive, full-time environmental commission, possibly modeled after the Utilities Commission.

This section became effective September 10, 2009. (MM)

Issues Related to the Environmental Impacts of Cement Plants

S.L. 2009-574, Sec. 6.5 (HB 945, Sec. 6.5) provides that the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, may study issues related to cement plants.

This section became effective September 10, 2009. (MM)

Expanding Alternative Energy Use by State Government

S.L. 2009-574, Sec. 6.6 (HB 945, Sec. 6.6) provides that the Environmental Review Commission may study the feasibility and desirability of State government expanding its use of alternative sources of energy for fueling vehicles that are owned or leased by the State, as well as for providing energy to power heating, ventilating, and air conditioning (HVAC) systems in buildings owned or leased by the State, and to power other systems, motors, and appliances that are owned or leased by the State.

This section became effective September 10, 2009. (MM)

Sustainable Growth through the Year 2050

S.L. 2009-574, Sec. 6.7 (HB 945, Sec. 6.7) provides that the Environmental Review Commission (ERC) may study how North Carolina can grow and develop sustainably in the future through the year 2050. The ERC may consider what it means for the State's growth and development to be sustainable, focusing on the following areas:

- Economic development, including transportation, water, and sewer infrastructure.
- The State's natural resources, including its land, water, air, local food supply, and energy supplies.
- Quality of life issues, including health and education.

This section became effective September 10, 2009. (MM)

Green School Construction Loan Fund

S.L. 2009-574, Sec. 6.8 (HB 945, Sec. 6.8) provides that the Environmental Review Commission may study the possibility of establishing a Green School Construction Loan Fund to provide no-interest loans to local school administrative units for green construction, with priority given to projects that will have the greatest impact on reducing the use of energy and water.

This section became effective September 10, 2009. (MM)

Disclosure of Coastal Hazards

S.L. 2009-574, Sec. 6.9 (HB 945, Sec. 6.9) provides that the Environmental Review Commission may study the establishment of a system whereby prospective purchasers of coastal properties subject to certain hazards can receive reasonable notice of these hazards prior to acquisition of property.

This section became effective September 10, 2009. (MM)

Phase-Out Lagoon and Sprayfield Systems

S.L. 2009-574, Sec. 6.10 (HB 945, Sec. 6.10) provides that the Environmental Review Commission may study ways to phase-out animal waste management systems that employ lagoon and sprayfield systems.

This section became effective September 10, 2009. (MM)

Phase-Out Polybrominated Diphenyl Ethers (PBDEs) and Bisphenol A

S.L. 2009-574, Sec. 6.11 (HB 945, Sec. 6.11) provides that the Environmental Review Commission may study ways to phase-out Polybrominated Diphenyl Ethers (PBDEs) and Bisphenol A in flame-retardant products.

This section became effective September 10, 2009. (MM)

Strengthen Pesticide Law for Workers

S.L. 2009-574, Sec. 6.12 (HB 945, Sec. 6.12) provides that the Environmental Review Commission may study ways to strengthen pesticide law for the protection of workers.

This section became effective September 10, 2009. (MM)

Recycle Products Containing Mercury

S.L. 2009-574, Sec. 6.13 (HB 945, Sec. 6.13) provides that the Environmental Review Commission may study the possibility of requiring all public agencies to recycle all spent fluorescent lights and mercury thermostats, requiring the removal of all fluorescent lights and mercury thermostats from buildings prior to demolition, and banning mercury-containing products from unlined landfills.

This section became effective September 10, 2009. (MM)

Ordinances Banning Clotheslines

S.L. 2009-574, Sec. 6.14 (HB 945, Sec. 6.14) provides that the Environmental Review Commission may study city ordinances and county ordinances prohibiting the installation of clotheslines.

This section became effective September 10, 2009. (MM)

Green Building Code

S.L. 2009-574, Sec. 6.15 (HB 945, Sec. 6.15) provides that the Environmental Review Commission may study the possibility of requiring new and renovated commercial buildings and new residential buildings to comply with energy conservation standards.

This section became effective September 10, 2009. (MM)

Environmental Documents Prepared Pursuant to G.S. 113A-4

S.L. 2009-574, Sec. 6.16 (HB 945, Sec. 6.16) provides that the Environmental Review Commission may study whether the circumstances under which an environmental document must be prepared pursuant to G.S. 113A-4 (Environmental Impact Statements under the State Environmental Policy Act) should be clarified.

This section became effective September 10, 2009. (MM)

Use and Storage of Reclaimed Water

S.L. 2009-574, Sec. 6.17 (HB 945, Sec. 6.17) provides that the Environmental Review Commission, in consultation with the Department of Environment and Natural Resources, may study issues related to the use and storage of reclaimed water.

This section became effective September 10, 2009. (MM)

Remediation of Industrial and Commercial Site Contamination

S.L. 2009-574, Sec. 6.18 (HB 945, Sec. 6.18) provides that the Environmental Review Commission may study environmentally sound mechanisms for accelerating the remediation of industrial and commercial site contamination.

This section became effective September 10, 2009. (MM)

Reducing Diesel Emissions

S.L. 2009-574, Sec. 6.19 (HB 945, Sec. 6.19) provides that the Environmental Review Commission, in consultation with the Division of Air Quality of the Department of Environment and Natural Resources, the Department of Transportation, and the Department of Administration, may study the feasibility and the advisability of adopting requirements aimed at reducing diesel emissions for construction projects that are funded in whole or in part with State or federal funds.

This section became effective September 10, 2009. (MM)

Renewable Energy and Alternative Fuel Tax Credits

S.L. 2009-574, Sec. 7.5 (HB 945, Sec. 7.5) provides that the Revenue Laws Study Committee and the Environmental Review Commission may study renewable energy tax credits and incentives for energy conservation.

This section became effective September 10, 2009. (MM)

Referrals to Departments, Agencies, Etc.

Review of Fee Schedules

S.L. 2009-451, Sec. 13.1A (SB 202, Sec. 13.1A) directs the Department of Environment and Natural Resources (DENR), as part of its duties, to review all fees charged under any program under its authority to determine whether any of these fees should be changed. DENR must submit a report to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division.

The report must include the following:

- The most recent Biennial Fee Report submitted by DENR to the Office of State Budget and Management.
- A list of each fee charged under any program under DENR's authority that, for each fee, identifies the program, if any, and the division of DENR, if any, that is supported by the fee; the total expenditures for each program supported by fees; an evaluation of any inflationary change since the last change to the amount of the fee; and any other information deemed relevant to this review.
- DENR's findings resulting from its review and any recommendations to increase or decrease any of these fees.

This section became effective July 1, 2009. (MM)

Advisability of Eliminating or Consolidating any Environmental Boards, Commissions, or Councils

S.L. 2009-451, Sec. 13.1B (SB 202, Sec. 13.1B) directs the Department of Environment and Natural Resources (DENR), in consultation with the Fiscal Research Division (FRD), to study the advisability of eliminating or consolidating any boards, commissions, or councils that are located within DENR for organizational, budgetary, or administrative purposes and that are involved in environmental policy-making in North Carolina, with powers and duties ranging from advisory to rule-making and quasi-judicial.

In conducting this study, DENR must consider whether the number of these environmental boards, commissions, and councils has created any inefficiency or duplication in overall environmental program delivery and whether the members that comprise an environmental board, commission, or council generally have the time and expertise necessary to address the environmental issues coming before them.

DENR must report its findings and any recommendations resulting from the study, including any legislative or administrative proposals by May 1, 2010, to the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources and FRD.

This section became effective July 1, 2009. (MM)

Study Access to State Parks

S.L. 2009-451, Sec. 13.9B (SB 202, Sec. 13.9B) directs the Division of Parks and Recreation (DPR) of the Department of Environment and Natural Resources, in consultation with the Fiscal Research Division (FRD) of the General Assembly, to study the costs and benefits of charging parking fees at any or all State parks within the State Parks System. DPR must report the results of the study to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and FRD on or before March 1, 2010.

This section became effective July 1, 2009. (JLM)

Existing Laws and Policies Related to the Use of Temporary Erosion Control Structures

S.L. 2009-574, Sec. 41 (HB 945, Sec. 41) provides that the Department of Environment and Natural Resources (DENR), in consultation with the Coastal Resources Commission, may study existing laws and policies related to the use of temporary erosion control structures for purposes of protecting imminently threatened roads and buildings and may determine whether changes should be made in law or policy to better manage eroding shorelines in a manner consistent with protection of the environmental, recreational, and economic value of beaches and unobstructed public access to the beach. The study may give special consideration to the use of temporary erosion control structures on inlet shorelines and in communities actively pursuing a beach nourishment project.

DENR may report its findings, including any recommended legislation, to the Environmental Review Commission (ERC) on or before April 1, 2010. DENR may report to the ERC on progress toward completion of the Beach and Inlet Management Plan on or before June 1, 2010, as required by S.L. 2000-67, Sec. 13.9.

This section became effective September 10, 2009. (MM)

Measures to Mitigate the Impact of Erosion Threatened Structures on the Public Beach

S.L. 2009-574, Sec. 42 (HB 945, Sec. 42) provides that the Department of Environment and Natural Resources (DENR), in consultation with the Department of Insurance, the Federal Emergency Management Agency, and local government representatives from municipalities and counties with jurisdiction over ocean and inlet shorelines, may study measures to mitigate the impact of erosion-threatened structures on the public beach and reduce potential public costs by relocating imminently threatened structures. In conducting the study, DENR may do all of the following:

- Identify potential sources of funding for relocation of structures, including federal hazard mitigation funds and insurance policies.
- Review programs in other states that address erosion hazards through relocation of imminently threatened structures.
- Describe existing State and local government authority to address erosion-threatened structures on ocean and inlet shorelines.
- Identify potential obstacles to creation of a hazard mitigation program to relocate imminently threatened structures.

DENR may report the results of the study and any recommendations to the Environmental Review Commission on or before September 1, 2010.

This section became effective September 10, 2009. (MM)

Major Pending Legislation

Study Reclaimed Water

HB 643 would authorize the Environmental Review Commission (ERC), in consultation with the Department of Environment and Natural Resources, to study issues related to the use and storage of reclaimed water. In its study, the ERC may study:

- The feasibility and desirability of implementation of reclaimed water programs by municipal wastewater treatment facilities for nonconsumptive indoor use and outdoor use.

- The feasibility and desirability of storage of reclaimed water in aquifers by municipal wastewater treatment facilities.
- Whether reclaimed water can be safely stored in and recovered from aquifers.

Section 6.17 of S.L. 2009-574 (The Studies Act of 2009) also authorizes the ERC to study issues related to the storage and use of reclaimed water. House Bill 643 is pending in the House Committee on Rules, Calendar, and Operations. (JM)

Amendments to Concord-Kannapolis Interbasin Transfer Certificate

HB 1099 (Amend Environmental Laws 2009) would prohibit the provision of water from the Catawba River to the Rocky River Basin pursuant to the Concord-Kannapolis interbasin transfer certificate approved by the Environmental Management Commission unless the following two conditions are met:

- Concord and Kannapolis are transferring 10 million gallons per day from the Yadkin River Basin to the Rocky River Basin.
- There are no other practicable water supplies available to Concord and Kannapolis.

HB 1099 passed the Senate, but the House of Representatives failed to concur in the Senate Committee Substitute. A conference committee has been appointed for the bill. (JM)

Creation of Yadkin River Trust

HB 1099 (Amend Environmental Laws 2009) would: (i) authorize creation of the Yadkin River Trust (Trust); (ii) authorize acquisition by the Trust of the license issued by the Federal Energy Regulatory Commission for a hydroelectric project located along the Yadkin River, which is currently owned and operated by Alcoa Power Generating Inc. (the Yadkin Project or Project); and (iii) authorize the State to negotiate, pursue transfer of property, and execute agreements as necessary for acquisition of the Yadkin Project.

HB 1099 passed the Senate, but the House of Representatives failed to concur in the Senate Committee Substitute. A conference committee has been appointed for the bill. (JLM)

Amend Electronics Recycling Law

SB 887 would amend provisions enacted in 2007 and 2008 to manage certain discarded electronic equipment (Part 2E, Article 9, Chapter 130A of the General Statutes). These provisions are generally scheduled to become effective July 1, 2010 (S.L. 2009-484, Sec. 16). Senate Bill 887 would:

- Change several definitions, including adding several types of equipment to the definition of computer equipment, and changing the definition of computer manufacturer to exclude manufacturers who do not manufacture equipment for use by consumers.
- Provide that a computer manufacturer's responsibility under the Article and its computer equipment recycling plan required under existing law would be limited to reusing or recycling computer equipment that is discarded by occupants of a single detached dwelling unit or a single unit of a multiple dwelling, which equipment has been used primarily for personal or home business use.
- Provide that computer equipment and television manufacturers, retailers, and discarded equipment collectors are not liable for data left on a covered device that is collected or recovered.
- Provide that a television manufacturer's obligation to recycle its market share of televisions is limited to televisions that are discarded by occupants of a single

detached dwelling unit or single unit of a multiple dwelling, which equipment has been used primarily for personal or home business use.

- Make changes to the statute governing the purchase of equipment by state agencies, political subdivisions, or other public bodies from manufacturers that are not in compliance with registration, labeling, and recycling requirements. The changes would provide that State, local, and other public bodies are prohibited from entering into any contract with noncompliant manufacturers and also requires public bodies to give preferences to equipment manufacturers that have programs to recover other manufacturers' equipment.

HB 1426 and HB1427 contain provisions substantially similar to those contained in SB 887. All three bills are pending in the House Committee on Environment and Natural Resources. (JLM)

Permitting of Wind Energy Facilities

SB 1068 would create a dual program for the permitting of wind energy facilities. Permits for wind energy facilities proposed to be located within the 20 coastal counties would be reviewed and enforced by the Coastal Resources Commission. Permits for wind energy facilities proposed to be located in the State's remaining 80 counties would be reviewed and acted upon by the Environmental Management Commission. Senate Bill 1068 also would amend the Mountain Ridge Protection Act of 1983 (Ridge Law) to clarify that windmills, when associated with a residence, employed for the primary purpose of generating electricity for use within the residence, and no more than 100 feet from the base to the turbine hub, are not considered to be "tall buildings or structures" for the purposes of the Ridge Law. Senate Bill 1068 is pending in the House Committee on Energy and Energy Efficiency. (JM)

Chapter 12
Finance

Cindy Avrette (CA), Judy Collier (JC), Dan Ettefagh (DE),
Heather Fennell (HF), Trina Griffin (TG), Martha Walston (MW)
For a more detailed explanation, see the *2009 Finance Law Changes* publication

Enacted Legislation

Modify Corporate Apportionment Formula

S.L. 2009-54 (SB 575) changes the corporate income tax apportionment formula used by a capital intensive multistate corporation meeting specific investment criterion from a three-factor formula based upon property, payroll and double-weighted sales to a single sales factor formula. The apportionment formula determines the amount of a multistate corporation's income that may be taxable by North Carolina. A single sales factor formula reduces the income tax liability of a corporation with relatively large shares of its nationwide property in North Carolina but a relatively small share of its nationwide sales in North Carolina.

The act reduces General Fund revenues by approximately $3 million annually beginning in fiscal year 2011-2012. The loss could become as great as $12.5 million a year by fiscal year 2018-2019.

The act is effective for taxable years beginning on or after January 1, 2010. (CA)

Add Division of Law Enforcement Support Services to Crime Control and Public Safety

S.L. 2009-81 (HB 201), as clarified by S.L. 2009-550 (HB 274), provides exemptions from the highway use tax for State agencies acting as a pass-through for vehicles received through a United States Department of Defense program that are subsequently transferred to an emergency response unit, a law enforcement agency, or fire department. S.L. 2009-550 establishes the retail value of a vehicle transferred through this program for purposes of the highway use tax as the price paid by the purchaser of the vehicle rather than the market value of the vehicle.[1]

This act became effective June 11, 2009. The clarifying change in S.L. 2009-550 became effective August 23, 2009. (CA)

State Treasurer Investments

S.L. 2009-98 (SB 703), requested by the Office of the State Treasurer, gives the State Treasurer more flexibility to invest special funds [2] held by the State Treasurer, with the goal of increasing portfolio return and better managing risk.

This act became effective June 11, 2009. (MW)

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[1] Section 2.(e) of S.L. 2009-550.

[2] These special funds are listed in G.S. 147-69.2 and include, among others, the various State and local governmental employee retirement systems. The employee retirement systems are supported by investment returns, employee contributions, and employer contributions.

Temporary Floor for Motor Fuels Tax Rate

S.L. 2009-108 (SB 200) establishes a minimum variable rate of 12.4¢ a gallon for calculation of the motor fuel tax rate, applicable for the period July 1, 2009, through June 30, 2011. With a minimum variable rate of 12.4¢, the motor fuel tax rate may be greater than 29.9¢ per gallon, but it may not be less.

The act increases revenue $50 million for fiscal year 2009-2010, and it is expected to increase revenue $17.5 million for fiscal year 2010-2011.

This act became effective June 15, 2009. (CA)

Changes for Bonds Authorized Under the American Recovery and Reinvestment Tax Act of 2009

S.L. 2009-140 (SB 754) authorizes local governments to issue the following types of government bonds established under the American Recovery and Reinvestment Tax Act of 2009 (ARRTA):

- Build America Bonds.
- Qualified school construction bonds.
- Recovery zone facility bonds.
- Recovery zone economic development bonds.
- Qualified energy conservation bonds.

It also authorizes the private sale of general obligation bonds that have a credit rating below "AA" or that are unrated and that are issued prior to December 31, 2010.

This act became effective June 19, 2009. (TG)

Rescind Advanced Property Tax Appraisal

S.L. 2009-180 (HB 1530) validates a resolution adopted by a board of county commissioners between January 1, 2009, and June 30, 2009, to postpone a 2009 property tax reappraisal. The effect of the resolution is that the schedule of values adopted by the board of county commissioners and used to appraise real property in the county for its last reappraisal will remain the schedule of values for property tax appraisal purposes until the county reappraises real property in accordance with the statutory time schedule.[3]

This act became effective June 26, 2009. (MW)

Two-Thirds Bonds Act of 2008

S.L. 2009-209 (HB 1508) modifies the Two-Thirds Bonds Act of 2008 in two ways. First, it changes the way the term "biennium" is used for purposes of calculating the two-thirds bonds availability. Second, this act adds as a special indebtedness project the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill.

The General Assembly regularly authorizes the issuance of general obligation bonds of the State to provide funds for the cost of State capital facilities. General obligation bond indebtedness is secured by the faith and credit and taxing power of the State. As a general rule, general obligation bond indebtedness must be approved by the voters. However, under Article V, Section 3(f) of the North Carolina Constitution, the State may issue non-voted general obligation

[3] G.S. 105-286 requires counties to reappraise real property at least every eight years. The purpose of a reappraisal is to help a county fairly and equitably distribute the tax burden between the different classes of property. To accomplish this purpose, a county may voluntarily advance its reappraisal schedule to a shorter cycle by passing a resolution setting a different reappraisal cycle. A county that has advanced its reappraisal cycle also may pass a resolution to go back to a longer cycle, so long as the octennial requirement continues to be met.

bonds in an amount not to exceed two-thirds of the amount by which it reduced its outstanding general obligation debt in the preceding biennium. The term "biennium" is not specifically defined in the Constitution. The Two-Thirds Bonds Act of 2008 used the term "biennium" to refer to any consecutive two-year period. Specifically, it referred to the two-year period ending June 30, 2008. No bonds have been issued under this authorization yet. The current bond counsel for the State of North Carolina interprets the term "biennium" as used in Article V, Section 3 of the North Carolina Constitution to refer to the traditional State biennium beginning on July 1 of odd-numbered years and ending on June 30 of the second following year. Thus, two-thirds bonds may be issued during the biennium ending June 30, 2011, based upon the amount of net debt reductions for the biennium ending June 30, 2009. This interpretation is consistent with the way the State applied the two-thirds provision for bonds authorized by legislation enacted in 1988 (S.L. 1987-1048) and in 1991 (S.L. 1991-760). The effect of this change is to extend the authorization for the sale of bonds for the Green Square Project, originally authorized in 2005 (S.L. 2005-255), into the 2009-2011 biennium. The Green Square Project consists of an office building for the Department of Environment and Natural Resources, the construction of a Nature Research Center for the NC Museum of Natural Science, and two parking decks.

This act also authorizes the issuance of $223 million of non-voted general obligation bond indebtedness to finance the capital costs of the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill.

This act became effective June 29, 2009. (TG)

Emergency Medical Services/Fire Department Sales Tax Refund

S.L. 2009-233 (HB 511) allows a volunteer fire department and a volunteer Emergency Medical Services squad that is exempt from income tax under the Internal Revenue Code a sales and use tax refund, regardless of how the nonprofit is organized. In 2008, the General Assembly clarified the types of nonprofits that may receive a semiannual refund of State and local sales and use taxes paid by the nonprofit on direct purchases of tangible personal property and services for use in carrying on the work of the nonprofit entity. The clarification provided a bright line test that used as its starting point nonprofits exempt from income tax under section 501(c)(3) of the Code. Many of the volunteer fire departments organized prior to the mid-1970s organized as a section 501(c)(4) organization because that is how, at the time, the IRS recommended they organize.

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

Tax Information Disclosure to State Treasurer

S.L. 2009-283 (SB 691) makes several changes related to the authority of the State Treasurer. First, the act authorizes the Department of Revenue to release tax information to the Treasurer's Office concerning whether a local government has timely filed a withholding report, has charged a penalty, or has paid a penalty for failure to file the report. This information may be used by the Treasurer to determine compliance with the Local Government Finance Act.

Second, the act increases the membership of the State Treasurer's Investment Advisory Committee from five to seven members by adding two public members and changes the experience requirements of the public members.

Third, it codifies the fiduciary standards applicable to the State Treasurer with regard to the administration of the Retirement Systems. The standard was modeled on the Model Uniform Management of Public Employee Retirement Systems Act, which was approved by the National Conference of Commissioners on Uniform State Laws. Specifically, the Treasurer must discharge his or her duties as follows:

- Solely in the interest of participants and beneficiaries.
- For the exclusive purpose of providing benefits and paying reasonable administrative expenses.
- With the care, skill, and caution under the circumstances that a prudent person who was familiar with the matters would use in a like situation.
- Impartially, taking into account the differing interests of participants and beneficiaries.
- Incurring only appropriate and reasonable costs.
- In accordance with a good-faith interpretation of the law governing the Retirement Systems.

The act further sets out the following standards to be followed by the State Treasurer when investing and managing the assets of the Retirement Systems, including that the Treasurer:

- Consider the following circumstances:
  - General economic conditions.
  - The possible effects of inflation or deflation.
  - The role of each investment in the overall portfolio.
  - The expected total return and the appreciation of capital.
  - Needs for liquidity, regular income, and preservation or appreciation of capital.
  - The adequacy of funding based on reasonable actuarial factors.
- Diversify the investments unless the Treasurer determines it is clearly not prudent to do so.
- Make reasonable efforts to verify relevant facts.
- Invest in any kind of real property which the State is authorized to acquire under Article 6 of Chapter 146 (Acquisition of State Lands).
- Consider other benefits created by an investment in addition to return on the investment, only if the investment would be prudent even without the collateral benefit.

Lastly, the act provides that when the State Treasurer is granted broadened investment authority regarding certain funds, the Treasurer must report in detail to the General Assembly regarding the investments. The report must be made during the first six months of each calendar year, covering performance in the prior calendar year. As to each type of new authority, the report must be made for at least four years. The funds are:

- The General Fund.
- The Teachers' and State Employees' Retirement System.
- The Consolidated Judicial Retirement System.
- The Firemen's and Rescue Workers' Pension Fund.
- The Local Government Employees' Retirement System.
- The Legislative Retirement System.
- The North Carolina National Guard Pension Fund.
- Any idle fund.

This act became effective July 10, 2009. (TG)

Defer Tax on Builders' Inventory

S.L. 2009-308 (HB 852) creates a property tax deferral program to defer for a maximum of three years the portion of taxes on an unoccupied, unsold residence attributable to the construction of the residence by a builder.

There is an estimated revenue deferral of $30-$35 million in fiscal year 2010-11, and an estimated revenue deferral of $7-$12 million in fiscal year 2011-12. Minimal or positive impact in subsequent years as program sunsets and deferred taxes are paid.

This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010, and is repealed for taxes imposed for taxable years beginning on or after July 1, 2013. (DE)

Energy Savings Contracts' Cap/Program Administration

S.L. 2009-375 (SB 304) increases the cap on the amount of energy savings contracts the State may enter into, from a $100 million aggregate principal cap, to a revolving cap of $500 million outstanding. The act also requires providers to conduct a life cycle cost analysis of each energy conservation measure in a final proposal and requires local governments that enter into energy savings contracts to report the terms of the contract to the State Energy Office.

Local governments and State agencies can enter into financing contracts to finance the cost of energy conservation measures including meter alteration, training, or services that will provide anticipated energy savings with respect to a facility. Under these guaranteed energy savings contracts all payments, except obligations on early termination, are to be made over time, and the energy cost savings are guaranteed to exceed the cost of the contract.

This act became effective July 31, 2009. (HF)

Job Development Investment Grant Program Technical Modifications

S.L. 2009-394 (HB 1516) makes clarifying and technical changes to the Jobs Development Investment Grant program and extends the sunset of the program from 2010 to 2016.

This act became effective July 31, 2009. (CA)

Continue School Construction Funding

S.L. 2009-395 (HB 311) makes permanent the designation of a certain percentage of local sales and use taxes for public school capital outlay purposes or related debt retirements, by eliminating the sunsets on those requirements. A percentage of the first one-half cent and second one-half cent sales and use tax levied by counties must be used for public school capital outlays or to retire indebtedness incurred for public school capital outlay. If a county can demonstrate that it does not need the earmarked revenue to meet its public school capital needs, it may petition the Local Government Commission to use the money for any public purposes. In making its decision, the Commission must consider not only the public school capital needs but also the other capital needs of the county.

This act became effective January 1, 2010. (HF)

Sales Tax: Reliance on Written Advice by Department of Revenue

S.L. 2009-413 (SB 909) provides that a seller is not liable to a purchaser if the seller collected and remitted sales and use tax in accordance with written advice it received from the Department of Revenue (Department).

All sales taxes, including over-collections, must be remitted to the Department. In the case of an over-collection, a purchaser's first course of remedy is to seek a refund from the seller who, in turn, may obtain a refund from the Department. A cause of action against the seller does not accrue until a purchaser has provided written notice to a seller, and the seller has had 60 days to respond. If the seller issues a refund or credit to the purchaser, the seller then may apply to the Department for the amount of the refund or credit. A seller is not entitled to a

refund or credit unless the purchaser has been refunded or received a credit for the amount of tax erroneously charged.

A taxpayer may request specific advice from the Department. If the Department furnishes erroneous advice and the taxpayer reasonably relies on that advice, the taxpayer is not liable to the Department for any penalty or additional assessment attributable to the erroneous advice to the extent the following conditions are satisfied:

- The advice was reasonably relied upon by the taxpayer.
- The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.
- The Department provided the advice in writing, or the Department's records establish that the Department provided erroneous verbal advice.

Current law already provides that a seller is not liable to the Department for any penalty or additional assessment if the advice it received from the Department was wrong. Under this act, a seller is further immunized from liability with respect to a purchaser from whom it over-collected sales and use tax based on advice it relied upon from the Department.

This act became effective August 5, 2009. (TG)

Franchise Tax-Overbilling Out of Capital Base

S.L. 2009-422 (SB 367) exempts "billings in excess of costs" from surplus and undivided profits, thus excluding them from the franchise tax capital base and addressing a unique accounting problem posed by long-term construction contracts.

The act became effective for taxable years beginning on or after January 1, 2010. (TG)

Revenue Laws Technical, Clarifying, and Administrative Changes

S.L. 2009-445 (SB 509) makes technical, clarifying, and administrative changes to the following taxes and related laws: Privilege license, income, excise and insurance taxes; sales and use taxes and highway use taxes; property taxes; occupancy taxes; and motor fuel taxes, as recommended by the Revenue Laws Study Committee.

This act became effective August 7. 2009. (CA) (MW)

Appropriations Act of 2009

Corporate and Individual Income Tax Surtax

S.L. 2009-451, Sec. 27A.1 (SB 202, Sec. 27A.1) imposes a 3% income tax surcharge on corporate taxpayers and imposes income tax surcharges on individual taxpayers as indicated in the table below. Both surcharges are applied to the tax payable for the taxable year. No additional penalties for underpayment of income taxes may be applied to underpayments created by these surcharges. The surcharge will increase General Fund revenues by approximately $196 million in fiscal year 2009-2010 and $202 million in fiscal year 2010-2011.

Both surcharges are effective for taxable years beginning on or after January 1, 2009, and before January 1, 2011. (JC)

Individual Income Tax Surcharge Table

Filing Status	Over	Up To	Percentage
Married filing jointly or surviving spouse	$ 0 $100,000 $250,000	$100,000 $250,000 NA	0% 2% 3%
Head of household	$ 0 $ 80,000 $200,000	$ 80,000 $200,000 NA	0% 2% 3%
Single	$ 0 $ 60,000 $150,000	$ 60,000 $150,000 NA	0% 2% 3%
Married filing separately	$ 0 $ 50,000 $125,000	$50,000 $125,000 NA	0% 2% 3%

Increase Sales and Use Tax by 1%

S.L. 2009-451, Sec. 27A.2 (SB 202, Sec. 27A.2) raises the State sales tax rate 1% for 22 months. For the month of September, the State sales tax rate is 5.5%.

Effective October 2009, the State sales tax rate is 5.75%, and the local sales tax rate falls a corresponding quarter-cent. This quarter-cent sales tax "swap" was part of the Medicaid legislation enacted in 2007.

The increased sales tax rate generates approximately $803 million for the General Fund in fiscal year 2009-2010 and $1.1 billion in fiscal year 2010-2011.

The increased sales tax rate does not apply to certain lump-sum construction material contracts entered into before the increases become effective.

The sales tax changes apply to sales made on or after September 1, 2009, and before July 1, 2011. (CA)

Nexus Clarification and Click Throughs, Use Tax Line on Income Tax Return, Digital Products, Magazines Delivered by Mail

S.L. 2009-451, Sec. 27A.3 (SB 202, Sec. 27A.3) updates the tax code as it relates to digital products and remote sales in several ways.

First, it clarifies that a remote retailer who enters into a "click-through" contractual agreement with a North Carolina resident is soliciting business in this State for purposes of requiring a remote retailer to collect sales tax. This provision became effective August 7, 2009.

Second, it applies the State and local general rate of sales and use tax to "audio works," which includes music and ringtones; "audiovisual works," which includes movies, music videos, and news and entertainment programs; and books, magazines, newspapers, photographs, and greeting cards that are delivered or accessed electronically to the extent those items would be taxable if sold in a tangible medium. It also imposes sales tax on prewritten computer software that is delivered electronically with an exemption for certain "enterprise" software.

Third, it maintains the requirement that an individual who owes use tax and who is required to file an individual income tax return must pay the use tax annually when filing the return. This requirement was set to expire on January 1, 2010. Had the provision expired, an individual still would have been required to pay use tax, but using a separate form and following the schedule for the remittance of sales taxes.

Fourth, it eliminates the sales tax exemption for magazines delivered by mail. Under existing law, magazine publishers and other retailers who are engaged in business in this State are liable for State and local sales tax on their over-the-counter sales of magazines. However, sales of magazines by magazine vendors making door-to-door sales and retail sales of magazines by subscription delivered through the mail to subscribers inside or outside North Carolina are exempt from tax. In an effort to equalize the sales tax treatment of magazines, this act repeals the exemption for magazines delivered by mail.

The tax on digital goods and the elimination of the sales tax exemption on magazines delivered by mail became effective on January 1, 2010, and apply to sales made on or after that date. (TG)

Alcohol Excise Tax Changes

S.L. 2009-451, Sec. 27A.4 (SB 202, Sec. 27A.4) will increase General Fund revenues by approximately $57.7 million for fiscal year 2009-2010 and $47 million in fiscal year 2010-2011 by increasing the excise tax rate on alcohol and by retaining part of the beer and wine revenues distributed to local governments. The State shares a percentage of the excise taxes collected on beer and wine with the counties or cities in which the retail sale of these beverages is authorized. The distribution is made annually for the preceding 12-month period ending March 31. Under this section, the State will retain approximately 70% of the revenues for the 12-month period ending March 31, 2010. This section also reduces the percentage of the revenues distributed in the future so that 100% of the revenues derived from the increased tax rates in this section will go to the State.

The act increases the excise tax rate on beer, wine, and liquor as follows:

- The excise tax rate on beer is increased from 53.177 cents per gallon to 61.71 cents per gallon. The rate increase means the tax on a can of beer changes from 5 cents a can to 5.8 cents a can, or about a 5-cent increase in the cost of a six-pack.
- The excise tax rate on unfortified wine is increased from 21 cents per liter to 26.34 cents per liter. The excise tax rate on fortified wine increased from 24 cents per liter to 29.34 cents per liter, effective September 1, 2009. The rate increase means the tax on a bottle of wine changes from approximately 16 cents a bottle to 20 cents a bottle.
- The excise tax rate on liquor sold in an ABC store is increased from 25% of the taxable sale to 30% of the taxable sale.

This section became effective September 1, 2009, and applies to wine, malt beverages and liquor sold on or after that date. (CA)

Tobacco Products Excise Tax Changes

S.L. 2009-451, Sec. 27A.5 (SB 202, Sec. 27A.5) increases the excise tax on cigarettes 10 cents a pack, from 35 cents to 45 cents. The act also increases excise tax on tobacco products other than cigarettes from 10% to 12.8% of the cost price of the products. These tax changes will increase General Fund revenues by approximately $38 million for fiscal year 2009-2010 and $54.5 million for fiscal year 2010-2011.

This section became effective September 1, 2009. (JC)

Internal Revenue Code Conformity

S.L. 2009-451, Sec. 27A.6 (SB 202, Sec. 27A.6), a recommendation of the Revenue Laws Study Committee, updates from May 1, 2008, to May 1, 2009, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina conforms to the majority of changes made by the following six federal acts:

- Heartland, Habitat, Harvest, and Horticulture Act of 2008.
- Heroes Earnings Assistance and Relief Tax Act of 2008.
- Housing Assistance Tax Act of 2008.
- Emergency Economic Stabilization Act of 2008 (EESA).
- Worker, Retiree, and Employer Recovery Act of 2008.
- American Recovery and Reinvestment Tax Act of 2009 (ARRTA).

However, the General Assembly chose not to conform to several of the changes. Specifically, North Carolina is not conforming to the following provisions:

- Real property tax deduction for non-itemizers.
- Income tax deduction for sales or excise taxes on new vehicle purchases.
- Extension of bonus depreciation, under both EESA and ARRTA. The General Assembly decoupled from the bonus depreciation provisions in a manner similar to what has been done in the past by delaying the impact of the deduction. Taxpayers will be required to add back 85% of the accelerated depreciation amount in the year that it is claimed for federal purposes. Then, in subsequent years, the taxpayer may deduct from federal taxable income the amount of the addback, divided into five equal installments.
- For corporate filers only, the five-year carryback period for net operating losses attributable to a federally-declared disaster occurring during 2009 and for net operating losses of small businesses.
- Delayed recognition of certain cancellation of debt income.
- Suspension of applicable high-yield discount obligation rules for certain high-yield obligations.

The provision related to the real property tax deduction for non-itemizers is effective for taxable years beginning on or after January 1, 2008. The remaining provisions are effective for taxable years beginning on or after January 1, 2009. (TG)

Study of North Carolina's Sales and Income Tax Structure

S.L. 2009-451, Sec. 27A.7 (SB 202, Sec. 27A.7) authorizes the Finance Committees of the Senate and House to meet during the interim to study and recommend legislation to reform North Carolina's sales and income tax structure in order to broaden the tax base and lower the State's tax rates.

This section became effective July 1, 2009. (JC)

Real Property Sales Information

S.L. 2009-454 (SB 405), a recommendation of the Revenue Laws Study Committee, requires that a deed conveying real property and presented for registration before the register of deeds contain the following information:

- The name of each grantor and grantee and the mailing address of each grantor and grantee.
- A statement whether the property includes the primary residence of a grantor.

This act became effective January 1, 2010. (MW)

Withholding on Contractors Identified by Individual Taxpayer Identification Number

S.L. 2009-476 (SB 1006), which was a request of the Department of Revenue, requires a person who pays an Individual Taxpayer Identification Number (ITIN) holder more than $1,500 a year in compensation other than wages, to withhold 4% of the compensation.

The act is estimated to generate $8 million in fiscal year 2009-2010, and potentially $18 million in subsequent fiscal years.

This act is effective for taxable years beginning on or after January 1, 2010. (MW)

Community Land Trust Property Taxation

S.L. 2009-481 (HB 1586) classifies community land trust (CLT) property as a special class of property and requires resale restrictions to be considered in determining the property tax value.

This act will lower the value of land trust property for property tax purposes, potentially lowering the revenues of the cities and counties in which the properties reside. There are currently two qualifying community land trusts active in North Carolina: Durham Community Land Trust, and Orange Community Housing and Land Trust. The changes in this act will result in a $6,885.15 revenue loss for Durham County beginning in FY 2009-10 and a $5,250.64 revenue loss for the City of Durham beginning in FY 2009-10. The Orange Country Board of Equalization and Review is currently conducting a hearing regarding land trust property. Depending on how the Board rules, there could be an additional revenue loss to Orange County, the City of Carrboro, the City of Chapel Hill, and the Carrboro-Chapel Hill School District.

This act is effective for taxable years beginning on or after July 1, 2010. (MW) (DE)

Development Tier Designation Exception

S.L. 2009-505 (HB 1500) provides that any seafood industrial park created under Article 23C of Chapter 113 of the General Statutes has a development tier one designation. The tier designations assigned to counties each year by the Secretary of Commerce are designed to measure and rank how economically distressed each county is based on factors related to unemployment, median household income, and property values. Counties designated as tier one are the most economically distressed. The tier system is incorporated into various economic development programs, including the Article 3J Tax Credits, to encourage economic activity in the less prosperous areas of the state. Under current law, there are exceptions to the tier ranking system in which entities may be given a tier designation different from the county in which they are located, such as for industrial parks located in multiple jurisdictions. This act creates a new exception for seafood industrial parks.

Currently, the only seafood industrial park is located in Wanchese, Dare County, North Carolina. However, since this facility has no more room for expansion, the North Carolina Seafood Industrial Park Authority is seeking new locations for these industrial parks to accommodate future growth and promote job creation. The lower tier designation authorized by this act may enable seafood industrial parks to obtain more generous tax incentives and federal money they may not be able to obtain otherwise.

This act became effective on August 26, 2009, and expires on July 1, 2012. (TG)

Sales Tax Incentives for Flight Simulators

S.L. 2009-511 (SB 1057) exempts from sales and use tax the sales of all flight simulators used for flight crew training and maintenance training. Previously, G.S. 164.13(45) provided a sales tax exemption for sales of aircraft lubricants, aircraft repair parts, aircraft accessories, and aircraft simulators for flight crew training to an interstate passenger air carrier for use at its hub.

This act became effective October 1, 2009. (HF)

Job Maintenance and Capital Development Fund Modifications

S.L. 2009-520 (HB 884) modifies the minimum investment and job retention requirements needed to receive a grant from the Job Maintenance and Capital Development Fund. It does not change any of the other conditions a business must meet to qualify for a grant from the Fund. It provides the following minimum level of investment and job retention for a manufacturing business that is converting its manufacturing process to change the product it produces:

- A business must invest or intend to invest at least $65 million of private funds in improvements to real property and additions to tangible personal property in the project within a three-year period beginning with the time the investment commences.
- A business must employ at least 320 full-time employees at the project for the full term of the grant.

The Department may not enter into more than five agreements, and this act does not change that limitation. However, the act does increase the total aggregate cost of all agreements for grants from the Fund from $60 million to $69 million, and it increases the annual cost of any one agreement from $4 million to $6 million.

This act becomes effective July 1, 2010. (CA)

Revolving Loan Fund for Energy Improvements

S.L. 2009-522 (HB 1389) authorizes cities and counties to establish loan programs to finance energy efficiency improvements and the installation of distributed renewable energy sources that are permanently affixed to real property. Cities and counties may use Energy Efficient Conservation Block Grants (EECBG) funds and any other unrestricted funds for the program. The term of the loans may not be greater than 15 years, and the annual interest rate charged on the loans may not exceed 8%. The term "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8.

North Carolina cities and counties are eligible to obtain federal grant funds under the American Recovery and Reinvestment Act of 2009, P.L. 111-5, during the 2009-2011 biennium to finance certain energy-related programs. The EECBG Program seeks to assist eligible entities to reduce fossil fuel emissions, to reduce total energy use, and to improve energy efficiency in transportation and buildings.

This act became effective August 26, 2009. (HF)

Industrial Development Fund Changes/Research and Production Service Districts

S.L. 2009-523 (HB 1514) expands the use of the Industrial Development Fund (IDF) and temporarily authorizes the establishment of additional county research and production service districts.

The IDF provides funds to assist local governments of the State's most economically distressed counties in creating jobs for certain industries. Prior to this act, an "economically distressed county" was a county that had one of the 65 highest rankings under the development tier designation. IDF funds must be used for (i) installation of or purchases of equipment for eligible industries; (ii) structural repairs and renovations of buildings for expansion of eligible industries; or (iii) construction of or improvements to new or existing utility lines or equipment or transportation infrastructure for existing or new building for the eligible industries. The funds must be used by the city and county governments for projects that directly result in the creation

of new jobs and must be expended at a maximum rate of $5,000 per new job created, up to a maximum of $500,000 per project. Within the IDF, there is a special account entitled the Utility Account that provides funds to assist the local government units of economically distressed counties. The funds in the Utility Account may be used only for the construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. There is no maximum funding amount per new job to be created or per project under the Utility Account.

This act makes the following changes related to the IDF:

- Increases the maximum rate by which funds in the IDF are to be expended for jobs from $5,000 to $10,000.
- Authorizes funds from the IDF to be spent for job retention as well as job creation.
- Expands the definition of "economically distressed county" as one that is a tier one or tier two county, which consists of the top 80 counties, compared to a county that has one of the 65 highest rankings as under prior law.
- Provides funds from the Utility Account to tier one or tier two counties instead of only to counties with one of the 65 highest rankings under the development tier designation.

This act also authorizes additional county research and production service districts.

This act became effective on August 26, 2009. The modification of the qualification of counties for IDF benefits expires on July 1, 2012. (TG)

Development Tier Exception Modification

S.L. 2009-524 (SB 898) reduces from one-third to one-fifth, the percentage of property of an industrial park located in two counties that must be located in the lower-tiered county in order to be eligible for the lower tier designation. The counties also must have entered into an interlocal agreement providing that the incremental increase in property tax revenues within the park be shared equally by the counties.

The Department of Commerce annually ranks the State's 100 counties based on economic well-being and assigns a tier designation to each county. This tier system is incorporated into various State incentive programs to encourage economic activity in the less prosperous areas of the State. The 40 most distressed counties are designated tier one, the next 40 are designated tier two, and the remaining 20 counties are designated tier three. A development tier designation is effective only for the calendar year following the designation.

The ranking system is based upon a county's development factor and statutorily mandated adjustments. One of the statutorily mandated adjustments is for a two-county industrial park. An eligible two-county industrial park has the lower development tier designation of the two counties in which it is located. As a result of this act, a two-county industrial park is eligible for the lower tier designation if it meets all of the following conditions:

- It is located in two contiguous counties.
- At least one-fifth of the park is located in the county with the lower tier designation.
- It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
- The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.
- When more than one-half of the park is located in the higher-tiered county, the counties have entered into an interlocal agreement providing that the incremental increase in property tax revenues within the park shall be shared equally by the

counties. This requirement applies only to parks established on or after August 1, 2009.

This act became effective on August 26, 2009, and expires on July 1, 2012. (TG)

Critical Infrastructure Assessment Changes

S.L. 2009-525 (SB 97) does all of the following:

- Aligns the purposes for which cities and counties may issue bonds payable from special assessments with the purposes for which project development financing may be used and adds the financing of renewable energy sources and energy efficiency improvements as a purpose for which bonds payable from special assessments may be used.
- Allows a city or county to partner with a private entity to construct a project financed with assessment-based financing.
- Clarifies that a city or county may use one or more financing sources to pay the costs of a project for which a special assessment is imposed and provides that assessments may be used to secure revenue bonds or as additional security for a project development financing debt instrument.
- Provides budgeting guidance to local governments in meeting future project development debt obligations.

This act became effective August 26, 2009. (CA)

Congestion Relief/Intermodal Transport Fund

S.L. 2009-527 (HB 148), which was a recommendation of the 21st Century Transportation Committee, provides several funding options designed to improve public transportation and to relieve transportation-related congestion.

First, it establishes a fund to provide grants for public transportation, railroads for intermodal and multimodal facilities and inland ports, State ports for terminal railroads and improved access to military facilities, and expansion of intercity passenger rail service. Though established under the act, the Fund was not actually funded with any appropriations.

Second, the act authorizes transportation authorities to levy, with voter approval, a .5% local sales tax to be used for transportation systems only. This authority applies to the Triangle Transportation Authority for Wake, Durham, and Orange Counties, and to the Piedmont Authority for Regional Transportation for Forsyth and Guilford Counties. Mecklenburg County already has the authority to levy an additional .5% local sales tax for public transportation purposes, but this act expands the uses for which the funds may be used, to include bicycle and pedestrian infrastructure that supports public transportation.

Third, the act authorizes all other counties that operate a public transportation system or have a municipality in the county that operates a public transportation system to levy, with voter approval, a .25% local sales tax to be used only for public transportation systems.

Lastly, the act authorizes increases in local vehicle registration taxes. The existing authorization for transportation authorities to levy a vehicle registration tax of up to $5 is increased to a maximum of $7, with an additional $1 increase beginning July 1, 2010. An additional $7 vehicle registration charge also is authorized for any county considered a transportation authority and operating a public transportation system.

This act became effective on August 11, 2009. (TG)

Expand Film Credit

S.L. 2009-529 (SB 943) increases the income tax credit for a production company from 15% to 25% of the company's qualifying expenditures. However, in exchange for the higher

credit amount, a taxpayer must subtract from the credit amount the difference between the amount of tax paid on purchases subject to the privilege tax on mill machinery and the amount of tax the company would have paid on those purchases if they had been subject to the combined general rate of sales tax. A taxpayer may continue to claim the lower 15% credit amount without making this deduction.

The act is expected to have minimal fiscal impact in fiscal year 2010-2011. The General Fund revenue loss in fiscal year 2011-2012 and future years is expected to be $40 to $60 million.

The act is effective for taxable years beginning on or after January 1, 2010, and applies to qualifying expenses incurred on or after that date. (CA)

Affiliate Liability for Other Tobacco Products Excise Tax

S.L. 2009-559 (SB 777) amends the definition of an "integrated wholesale dealer" for purposes of the excise tax on other tobacco products (OTP) so that an affiliate of a manufacturer of OTP may be treated the same as the manufacturer for purposes of allowing relief from paying the excise tax. The tax would become payable by the wholesale or retail dealer to whom the integrated wholesale dealer sold the product.

The excise tax rate on OTP is 10% of the cost price of the product. The tax is payable by the wholesale dealer or retail dealer who first acquires or otherwise handles OTP. By definition, all manufacturers are wholesale dealers. A manufacturer who is not a retail dealer and who ships OTP either to a wholesale dealer or a retail dealer may apply to the Secretary of Revenue to be relieved of paying the tax. Once granted permission, a manufacturer may choose not to pay the tax, which would result in the tax being paid by the wholesale or retail dealer to whom the manufacturer sells the product.

In 2007, the General Assembly provided that an integrated wholesale dealer may be treated like a manufacturer for purposes of allowing relief from paying the excise tax on OTP. The statute defines the term "integrated wholesale dealer" as a wholesale dealer who is an affiliate of a manufacturer of other tobacco products and is the only person to whom the manufacturer sells its products. This act eliminates the requirement in the definition of "integrated wholesale dealer" that the manufacturer sells its entire product to its affiliate. This change allows an affiliate of a manufacturer of OTP to be treated the same as the manufacturer with respect to payment of the OTP excise tax, even if the manufacturer sells its products to someone other than the affiliate.

The act also modifies the definition of manufacturer to include a contract manufacturer. Currently, contract manufacturers are not explicitly included in the OTP definition of "manufacturer", but they are included specifically in the definition of a cigarette distributor.

The act makes several changes to better enable the Department of Revenue to track OTP purchases:

- It specifies that a contract manufacturer must be the exclusive purchaser of the products under the contract.
- It prohibits integrated wholesale dealers from selling, borrowing, loaning, or exchanging non-tax-paid OTP to, from, or with other integrated wholesale dealers.
- It requires a person who transports OTP upon the public highways, roads, or streets of this State to file a report, upon notice of the Secretary, in a form prescribed by and containing the information required by the Secretary. This requirement is similar to the one imposed under G.S. 105-113.18(3) for the transportation of cigarettes.

This act became effective August 11, 2009. (CA)

Studies

Referrals to Existing Commissions/Committees

Appropriations Act of 2009

S.L. 2009-451, Sec. 27A.7 (SB 202, Sec. 27A.7) provides for the study of North Carolina's sales and income tax structure. The President Pro Tempore of the Senate and the Speaker of the House of Representatives authorize the Finance Committees of the Senate and the House to meet during the interim to study and recommend legislation to reform North Carolina's sales and income tax structure in order to broaden the tax base and lower the State's tax rates.

This section became effective July 1, 2009. (JC)

The Studies Act of 2009

S.L. 2009-574 (HB 945), Part VII, authorizes the Revenue Laws Study Committee to study the following topics and to report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening:

- Local government owned and operated communication services.
- Issues relating to the effects of enacted property tax relief programs and exemptions on local units of government.
- Effects of government-enacted tax incentives, exemptions, credits, refunds, and exclusions on State revenues.
- Renewable energy tax credits and incentives for energy conservation.
- Small business incentives for job preservation and growth.
- Equal treatment of government retiree benefits.

This part became effective August 11, 2009. (JC)

Chapter 13
Health and Human Services

Susan Barham (SB), Theresa Matula (TM),
Shawn Parker (SP), Ben Popkin (BP),
Barbara Riley (BR)

Enacted Legislation

Prohibit Smoking in Certain Public Places

S.L. 2009-27 (HB 2) amends existing State smoking laws by prohibiting smoking in enclosed areas of restaurants, bars, and lodging establishments that prepare and serve food and drink and by authorizing local governments to restrict smoking in areas controlled by the local government and in enclosed public places.

Exceptions to the State ban on smoking and to the local government authority to restrict smoking are made for cigar bars that meet the required criteria, for smoking rooms in lodging establishments (up to 20% of rooms), and for private clubs. Exceptions to the local government authority to restrict smoking also include the following: Private residences (unless used as a child care or long term care facility), private vehicles (unless used for commercial or employment purposes), tobacco shops, the premises and facilities of tobacco growers, processors, manufacturers, processors, or dealers, and for actors using tobacco as part of a live production on the set of a movie, television, or theater. Rules adopted by local boards of health may become effective only upon adoption of an ordinance approving the rules by the appropriate board of county commissioners.

Enforcement of smoking restrictions is as follows: Persons in control of a restaurant or bar must conspicuously post no smoking signs (with the content as provided by rule adopted by the Commission for Public Health), must remove all indoor ashtrays, and must direct persons who are smoking to put out the tobacco product. Failure to comply with these three directions or with the rules adopted by the Commission to implement the provisions of the Article will allow the local heath director to issue a written warning for the first two violations and then assess an administrative penalty of up to $200 for the third and ensuing violations. Persons continuing to smoke after being directed to stop smoking may be issued an infraction with a fine of up to $50 and no associated court costs.

This act became effective January 2, 2010. (BP)

Amend North Carolina Sudden Infant Death Syndrome Law - Medical Waivers

S.L. 2009-64 (HB 1315) amends the current law on child care facilities. The act provides that a health care professional, as defined in rule by the Child Care Commission, is authorized to waive the requirement that a facility must place children 12 months old or younger on their backs for sleeping.

This act became effective June 8, 2009. (BR)

Data Sharing – Department of Health and Human Services Agencies

S.L. 2009-65 (HB 925) authorizes facilities to share confidential client information with the Secretary of Health and Human Services and Community Care of North Carolina or other

primary care case management (PCCM) programs contracting with the Department to serve recipients of publicly funded health and related services, for the purpose of coordinating and improving the quality of care for recipients of these services.

This act became effective June 8, 2009. (BP)

Educate the Public about Cord Blood Banking

S.L. 2009-67 (HB 1331) requires the Department of Health and Human Services to make available on its website printable publications containing specified information regarding umbilical cord stem cells and umbilical cord blood banking. The act requires:

- An explanation of the medical processes involved.
- An explanation of any risks to the mother and the newborn child.
- Options available to the mother concerning discarding, donating, or storing the stem cells.
- Current and future medical uses, risks, and benefits of cord blood collection.
- An explanation of differences between public and private umbilical cord blood banking.
- Options for ownership and future use of donated umbilical cord blood.

As an alternative to providing the downloadable publication on its website, the Department may include on its website a link to a federally sponsored website that contains all of the specified information.

This act became effective June 8, 2009. (SP)

Special Care Dentistry Collaboration

S.L. 2009-100 (SB 188) directs the Department of Health and Human Services, Division of Public Health, to collaborate with the following entities on ways to improve the availability of services for special care populations:

- Division of Medical Assistance.
- Division of Aging and Adult Services.
- University of North Carolina at Chapel Hill School of Dentistry.
- East Carolina University School of Dentistry.
- North Carolina Dental Society.
- Current providers of special care dentistry services.

The Department is required to report findings and recommendations to the North Carolina Study Commission on Aging and the Public Health Study Commission by February 1, 2010.

This act became effective August 5, 2009. (TM)

Limit Well Water Testing for Volatile Organic Compounds

S.L. 2009-124 (SB 141) directs local health departments to test water from newly constructed private drinking water wells for volatile organic compounds (VOCs) in accordance with rules adopted by the Commission for Public Health (Commission). The act directs the Commission to adopt rules to determine when this testing is required in order to protect public health, and to incorporate the following factors in developing the rules:

- Known current and historic land uses around well sites and associated contaminants.
- Known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors.
- Any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources.
- Visual on-site inspections of well sites.

The act repeals a provision of S.L. 2008-198, which set an effective date of October 1, 2009, for this testing. This act became effective June 19, 2009. The provision directing the local health departments to test the water for VOCs becomes effective October 1, 2010. (BP)

Clarify Consecutive Terms - Study Commission on Aging

S.L. 2009-142, Sec. 1 (HB 358, Sec. 1) clarifies the number of consecutive terms that a member of the North Carolina Study Commission on Aging may serve, by specifying that members may be appointed to a maximum of three consecutive terms.

This act became effective June 19, 2009. (TM)

Clarify Silver Alert - All Ages

S.L. 2009-143 (HB 1129) makes a technical change to the Silver Alert System law. S.L. 2007-469 established the Silver Alert System, within the North Carolina Center for Missing Persons, to provide for the rapid dissemination of information regarding a missing person believed to be suffering from dementia or other cognitive impairment. S.L. 2008-83 authorized the use of a Silver Alert for a person of any age believed to be suffering from dementia or other cognitive impairment and removed language pertaining to the missing person being 18 years of age or older. This act corrects a previous omission by changing the word "adult" to "person" so that it conforms to changes made in 2008.

This act became effective June 19, 2009. (TM)

Fairness in Certificate of Need Determinations - Inflation Adjustment

S.L. 2009-145 (HB 436) exempts from certificate of need (CON) review capital expenditures of more than $2 million for renovation, replacement, or expansion of nursing homes, adult care homes, or intermediate care facilities for the mentally retarded that do not change bed capacity or add new institutional health services or health service facilities to the existing facility. To be granted the exemption, the entity proposing to incur the capital expenditure must provide the Department of Health and Human Services with written notice documenting that one of the following is the purpose for the expenditure:

- Conversion of semiprivate rooms to private rooms.
- Providing homelike residential dining spaces for residents and their families or visitors.
- Modifying residential living or common areas to improve the quality of life of residents. The act also makes a conforming change to the statutes to allow for this new exemption.

This act became effective June 19, 2009. (BP)

Department of Health and Human Services/Procurement Methods

S.L. 2009-184 (HB 1088) adds developmental centers, neuromedical treatment centers, and alcohol and drug abuse treatment centers to the list of institutions that may make group purchases of supplies, materials, and equipment directly through a competitive bidding purchasing program. The competitive bidding group purchasing program is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.

This act became effective June 26, 2009, and applies to purchases made on and after that date. (TM)

Support for Developmental Disability Services

S.L. 2009-186 (HB 673) amends existing law by adding to the primary functions of Local Management Entities (LMEs) a requirement to develop a waiting list of persons with intellectual or developmental disabilities waiting for specific services. The list must be developed according to rules adopted by the Secretary of Health and Human Services to ensure that the waiting list data is collected consistently across the LMEs. Each LME reports the data annually to Department of Health and Human Services. The data collected includes numbers of persons who are:

- Waiting for residential services.
- Potentially eligible for Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities (CAP-MR/DD).
- In need of other services and supports funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS), including CAP-MR/DD.

The act also adds to the powers and duties of the Secretary a requirement to develop and adopt rules to govern a statewide data system containing the LME waiting list information. The rules establish standardized criteria to be used by the LMEs to ensure that the waiting list data are consistent across the LMEs. The Department would be required to do the following:

- Use this data for statewide planning and needs projections.
- Ensure that developmental disabilities services funded from State appropriations to or allocations from MH/DD/SAS, including CAP-MR/DD are authorized, according to guidelines issued by the Department, on a quarterly, semiannual, or annual basis unless a change in the individual's person-centered plan indicates a different authorization frequency.
- Develop new developmental disability service definitions for developmental disability services funded from State appropriations to or allocations from MH/DD/SAS, including CAP-MR/DD that allow for person-centered and self-directed supports.

The Department is required to report annually to the Joint Legislative Oversight Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report must indicate the services that are most needed throughout the State, plans to address unmet needs, and any cost projections for providing needed services.

This act became effective July 1, 2009. (BR)

Child Care Facilities Rules

S.L. 2009-187 (HB 1046) moves the authority to adopt rules establishing standards for certification of child care centers providing Developmental Day programs from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to the Child Care Commission.

This act became effective January 1, 2010. (TM)

Clarify Social Services Commission Authority

S.L. 2009-188 (HB 1271) directs the Social Services Commission to adopt rules to establish qualifications (in addition to educational requirements) for executive directors and staff employed in maternity homes and employed by child placing agencies and residential child care facilities. Qualifications include educational requirements, as well as other requirements such as

experience, minimum age standards, and provisions for executive directors and staff with criminal records.

This act became effective June 26, 2009. (SP)

Expand Local Management Entity Endorsement Removal Authority for Denied Access

S.L. 2009-189 (HB 576) amends the law concerning the primary functions of Local Management Entity (LME). The act provides that a LME has endorsement removal authority when a provider fails to allow access to the facility in accordance with rules established under G.S. 143B-139.1 (includes rules governing monitoring) and in the event of an emergency or in response to a complaint related to the health or safety of a client.

The act also directs the LME to make a referral to the Division of Health Service Regulation when there is reasonable cause to believe a facility is in violation of licensure rules and to make a referral to the local Division of Social Services when there is reasonable cause to believe abuse, neglect, or exploitation of a client has occurred.

This act became effective June 26, 2009. (SP)

Mental Health, Developmental Disability, and Substance Abuse Service Provider Entities – Client Rights Committees

S.L. 2009-190 (HB 1087) extends the requirement to establish human rights committees to entities that provide mental health, developmental disability, and substance abuse services and renames these committees "client rights and human rights committees."

This act became effective June 26, 2009. (SP)

Single Stream Local Management Entity Report on Allocation of Service Dollars

S.L. 2009-191 (HB 672) requires single stream Local Management Entities (LMEs) to report on the allocation of service dollars biannually and to allow public comment on the allocation at a regularly scheduled LME board of directors meeting. The act requires any LME, before proposing to reduce State funding to Housing and Urban Development (HUD) group homes and HUD apartments, to have approval from the Department of Health and Human Services and hold a public hearing prior to reducing HUD funding. The act directs the Department to analyze the effectiveness of single-stream funding.

This act became effective July 1, 2009. (SP)

Medicaid – No Prior Authorization for Hemophilic Drugs

S.L. 2009-210 (SB 324) extends the law exempting antihemophilic factor drugs from prior authorization requirements established by the Department of Health and Human Services under the Medicaid program. The law was set to expire on July 1, 2009.

This act became effective June 29, 2009. (SP)

Healthy Youth Act

S.L. 2009-213 (HB 88). See **Education**.

Authorize Voluntary Medical Registry Program

S.L. 2009-225 (SB 258) authorizes the Division of Emergency Management to establish a voluntary model registry for use by counties and municipalities in identifying the location of functionally and medically fragile persons in need of assistance during a disaster. The act also authorizes political subdivisions to coordinate registration of individuals into the registry. Although records, data, and any information relating to a person's entry into the registry is confidential, the local emergency management director may make information in the registry available to emergency response agencies for use in accordance with the purposes of this act.

This act became effective June 30, 2009. (BP)

Department of Health and Human Services – Update Current Inspection Practices

S.L. 2009-232 (HB 1186) amends the law concerning the monitoring and inspection of adult care homes. The Division of Health Service Regulation is responsible for oversight of the monitoring of adult care homes to ensure compliance with State and federal laws, rules, and regulations. The act eliminates a provision requiring the Division of Health Service Regulation to perform any required follow-up inspections.

This act became effective June 30, 2009. (TM)

Increase Transparency of Mental Health, Developmental Disabilities, and Substance Abuse Services Facilities

S.L. 2009-299 (SB 799) amends the law requiring that a State facility report the death of a client of the facility, to include deaths that occur within 14 days of a client's release from the facility. The report must be made without redactions, except as necessary to protect confidential personnel information. The facility also must report the death to the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act, and the advocacy agency must use the information in accordance with its powers and duties.

The act further requires that, notwithstanding laws providing for the rights of confidentiality of mental health, developmental disability, and substance abuse patients, and unless otherwise prohibited by State or federal law, the following information in reports made by a State facility concerning the death of a client or former client is public record:

- Name, sex, age, and date of birth of the deceased.
- Name of the reporting facility.
- Date, time and location of the death.
- A brief description of the circumstances and manner of the death.
- A list of all entities to whom the event was reported.

The act amends the law providing for the confidentiality of mental health, developmental disability, and substance abuse patients to allow for the release of the specified information as public record.

The act provides two additional exceptions concerning disclosure of confidential information:

- Applies G.S. 132-1.4 (providing that records of criminal investigations by public law enforcement officers generally are not public records but may be released by court order) to the records of criminal investigations by a law enforcement unit of a State facility, except for the information that would otherwise be released pursuant to law.
- Provides an exception to the confidentiality of records of criminal investigations by authorizing the Secretary of Health and Human Services to inform any person of any incident or event involving the welfare of a client or former client when release of the

information is determined to be essential to maintaining the integrity of the Department and is done in such a way as to avoid revealing the client's identity.

This act became effective July 17, 2009. (BR)

Required Tracking of Outpatient Commitments

S.L. 2009-315 (HB 1189) requires a physician or eligible psychologist recommending outpatient commitment after performing a first examination to contact the Local Management Entity (LME) serving the county where a respondent resides, or the LME that coordinated services for the respondent to inform the LME that the respondent has been scheduled for an appointment with an outpatient treatment center.

The act authorizes the first examination of a respondent to be conducted using telemedicine. Telemedicine is defined as the use of two-way, real-time, interactive audio and video between places of greater and lesser medical capability or expertise to provide support health care when the participants are in different geographical locations. The physician or eligible psychologist using telemedicine must be satisfied that the determinations that are made would not be different if the exam were done face to face. If not satisfied, the respondent must be taken for a face-to-face evaluation.

The act authorizes the Secretary of the Department of Health and Human Services to designate one or more special police officers to constitute a joint security force on the territory of the Long Leaf Neuro-Medical Treatment Center and the Eastern North Carolina School for the Deaf in Wilson County.

This act became effective July 17, 2009. (SP)

Department of Health and Human Services Technical Changes/Health Care Personnel

S.L. 2009-316 (HB 1187) amends the process by which a person may petition the Department of Health and Human Services to have his or her name removed from the Health Care Personnel Registry (Registry). The Registry includes the names of health care personnel who are working in health care facilities in the State and who are being investigated for, or have been found to have committed, an act of neglect or abuse, misappropriation of property, diversion of drugs, or fraud.

The act provides that a person's eligibility to petition for removal from the Registry requires a determination that the person's name was added to the Registry for a single finding of neglect, and removal of a finding of neglect may occur only once with respect to any person. The act authorizes health care facilities to provide confidential or other identifying information to the Registry, and confidential or other identifying information received by the Registry is not a public record. A person wishing to contest the Department's denial of a petition for removal of his or her name from the Registry may petition for a contested case hearing. The petition must be filed within 30 days of the mailing of the Department's denial.

This act became effective July 17, 2009. (BP)

Amend Rabies Laws

S.L. 2009-327 (SB 674) makes the following changes to the public health laws related to the administration of rabies vaccination:

- Requires the vaccination of domestic ferrets.
- Allows a registered veterinary technician to administer a rabies vaccine.
- Increases the cap for the administrative fee imposed by local health departments for rabies vaccines.

- Directs the Commission for Public Health to adopt rules establishing what information must be included on a rabies vaccination certificate.
- Authorizes euthanization of a stray or feral dog, cat, or ferret that has bitten a person (after 72 hours).

This act became effective October 1, 2009. (SP)

Mental Health/Law Enforcement Custody

S.L. 2009-340 (HB 243) amends the law governing the affidavit and petition process for involuntary commitment where the affiant is a physician. Under such circumstances, the physician affiant's examination constitutes the first examination. The act provides that if inpatient commitment is recommended and ordered by the magistrate, but a 24-hour inpatient facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be detained temporarily under appropriate supervision and, on further examination, released.

The act also amends the law that deals with the first examination of a respondent by a physician to provide that if a respondent is found to be mentally ill and dangerous to self or others and inpatient commitment is recommended, but no 24-hour facility is available, the respondent may be detained temporarily at the site of first examination under appropriate supervision for up to seven days. If after seven days a 24-hour facility is still unavailable, then that fact is to be reported to the clerk of superior court and the commitment proceedings terminated. New commitment proceedings may be initiated, but the affidavits used in support of the earlier proceedings many not be used. New affidavits must be filed and, if the affiant is a physician, a new examination conducted.

Finally, the act amends the Session Laws creating the First Commitment Pilot Program and expands from 10 to 15 the number of local management entities that may be granted a waiver of certain requirements for involuntary commitment by the Secretary of Health and Human Services and allowed to participate in the pilot.

The portions of the act amending the involuntary commitment statutes became effective October 1, 2009. The increase in the number of local management entities that may be allowed to participate in the First Commitment Pilot Program became effective July 1, 2009. (BR)

Free Medical Exam – Victims of Rape/Sex Offenses

S.L. 2009-354 (HB 1342) amends the Assistance Program for Victims of Rape and Sex Offenses:

- Repeals the provisions for assistance for sexual assault victims, or victims of attempted sexual assault, and provides a revised program as outlined below.
  - The State must arrange for victims to obtain a forensic medical examination free of charge.
  - A medical facility or medical professional performing a forensic medical exam must accept payment made by the Assistance Program for Victims of Rape and Sex Offenses (Program) as payment in full and is not allowed to bill other entities.
  - Sexual Assault Evidence Collection Kits must be used by medical facilities and medical professionals performing forensic medical exams.
  - Payment will be made directly to the medical facility or medical professional.
  - The medical facility or medical professional performing an exam must encourage victims to submit an application for reimbursement of medical expenses beyond the exam to the Crime Victims Compensation Commission.

- A victim may file a petition in the Superior Court of Wake County to seek a judicial review in the event of an adverse determination on a claim for assistance.

- Increases the threshold amount from $7,500 to $12,500 that the Director of the Crime Victims Compensation Commission, of the Department of Crime Control and Public Safety, can award for an initial or follow-up claim when the claim does not exceed that amount and does not include future economic loss. Also, makes a corresponding change to the threshold amount to provide that the Director must make a recommendation to the Commission regarding the award of compensation for an initial or follow-up claim when the claim exceeds $12,500 or involves future economic loss.
- Requires the Director or Commission to deny claims when it finds that there was contributory misconduct that is a proximate cause of becoming a victim, but specifies that contributory misconduct that is not a proximate cause of becoming a victim would not lead to an automatic denial of a claim.

This act became effective July 27, 2009. (TM)

Traumatic Brain Injury Residential Treatment Facilities – North Carolina Brain Injury Council

S.L. 2009-361 (HB 1309) amends the current law pertaining to the powers of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to provide the Commission with the authority to adopt rules for the licensure and accreditation of residential treatment facilities that provide services to persons with traumatic brain injury. The act renames the North Carolina Traumatic Brain Injury Advisory Council as the North Carolina Brain Injury Advisory Council, whose purpose is to review traumatic and other acquired brain injuries in North Carolina. The total Council membership is increased from 29 members to 33 members, with 23 voting members and 10 ex officio nonvoting members.

This act became effective July 27, 2009. (SP)

Emergency Medical Services Personnel/Recovery Rehabilitation/Department of Health and Human Services/North Carolina Physicians Health Program

S.L. 2009-363 (HB 878) directs the Secretary of Health and Human Services to establish programs to aid in the recovery and rehabilitation of Emergency Medical Services (EMS) personnel who experience chemical addiction or abuse and programs for monitoring these EMS personnel for safe practice. The act directs the Board of Medicine to refer all of its licensees whose health and effectiveness have been significantly impaired by alcohol, drug addiction, or mental illness to the North Carolina Physicians Health Program. The assessing and monitoring of a licensee, when done in good faith, are immune from civil liability and records relating to the assessments are confidential.

This act became effective July 27, 2009. (BP)

Certificate of Need Changes

S.L. 2009-373 (SB 804) amends the time frames for issuing a certificate of need (CON) after all applicable conditions of approval have been met. The act also allows the holder of the awarded CON to petition the court to increase the bond to be deposited by affected persons filing an appeal of a final Department decision granting a CON and to account for payment of costs and damages resulting from the filing of frivolous appeals or appeals filed to delay the applicant.

The act prohibits the Department of Health and Human Services from approving a CON for an application filed between July 31, 2009, and June 30, 2011, to develop a hospital-based offsite emergency department, unless it is operated under the license of and is located within the same county as a hospital with licensed, operational, acute care beds. The act directs the Department to study whether a hospital-based offsite emergency department should be required to be licensed as part of a general acute care hospital and be located in the same county as the hospital. The Department is directed to report its findings to the Joint Legislative Health Care Oversight Committee by December 31, 2010.

The CON time frame and bond amount provisions of this act became effective July 31, 2009, and apply to all final agency decisions made on or after that date. The hospital-based emergency department provision applies to CON applications for such facilities submitted to the Department on or after July 31, 2009, and expires June 30, 2011. The remainder of the act became effective July 31, 2009. (BP)

Replace Department of Health and Human Services with The University of North Carolina Center on Poverty – Adult Care Home/Public Health Study

S.L. 2009-391 (HB 996) repeals Part XIII of S.L. 2008-181 (The Studies Act of 2008), which required the Department of Health and Human Services to study the feasibility of operating a licensed adult care home in a public housing facility and report its results by August 1, 2009. The act directs the University of North Carolina Center on Poverty, Work and Opportunity to do the study and gives them an additional year to report the results.

This act became effective July 31, 2009. (TM)

Preparations for Aging Baby Boomers

S.L. 2009-407 (SB 195) requires the University of North Carolina Institute on Aging and the Division of Aging and Adult Services, Department of Health and Human Services, to assist the State in its preparations for the projected population growth of older adults by:

- Organizing and facilitating meetings of gerontologists, researchers, county representatives, directors of area agencies on aging, and various providers of State services to identify and prioritize issues for the State to address.
- Establishing a Web site containing models of local planning efforts and information on fostering retiree and volunteer involvement. The information contained on this site must represent the input of the North Carolina Association of County Commissioners, the University of North Carolina School of Government, higher education departments of municipal and regional planning and their partners, and area agencies on aging.

The Institute on Aging and the Division of Aging and Adult Services are directed to make progress reports on the above activities to the Governor and to the Study Commission on Aging on or before March 1, 2010, and on or before November 1, 2010.

This act became effective August 5, 2009. (TM)

Board of Pharmacy to Establish a Drug and Medical Device Repository

S.L. 2009-423 (HB 1296) establishes the Drug, Supplies, and Medical Device Repository Program to allow for the donation of unused drugs, supplies, and medical devices for use by participating pharmacies and free clinics offering care to the uninsured and underinsured in the

State. The Program is voluntary and will be administered by the North Carolina Board of Pharmacy, which will adopt rules necessary for the implementation of the program.

This act became effective August 5, 2009. (BP)

Clarify Volunteer Immunity/Automated External Defibrillator

S.L. 2009-424 (HB 1433) amends the existing provision limiting the liability of persons who do not receive compensation for providing first aid or emergency health care treatment to a person who is unconscious, ill, or injured. The act specifically includes any person who uses an automated external defibrillator and otherwise meets the requirements of the law.

This act became effective August 5, 2009. (BP)

Immunity for Nonprofit Health Referral Service

S.L. 2009-435 (SB 802) amends the existing provision limiting liability of volunteer health care professionals to provide that nonprofit community health referral services that refer low-income patients to physicians for free services are not liable for the acts or omissions of the physician if the physician maintains liability coverage for the services provided.

This act became effective October 1, 2009. (BP)

Release Controlled Substance Report Data to Chief Medical Examiner

S.L. 2009-438 (SB 628) provides after January 2, 2010, dispensers must report certain prescriptions to the Controlled Substances Reporting System within seven days of dispensing using a standard format.

The act directs the Department of Health and Human Services to release data collected under the Controlled Substance Reporting Act to the Chief Medical Examiner or duly appointed county medical examiner for purposes of investigating the death of an individual.

The act also provides that Article 90 does not prohibit a person authorized to prescribe controlled substances from disclosing or disseminating data obtained under this section regarding a particular patient to:

- A person authorized to prescribe controlled substances.
- A person authorized to receive the same data from the Department.

This act became effective August 7, 2009. (SP)

Public Health Technical Changes

S.L. 2009-442 (SB 345) adds public health preparedness as a new category of essential public health services and adds quality improvement to the list of items within the essential public health services for health support. The essential public health services are services that the Department of Environment and Natural Resources and the Department of Health and Human Services ensure are available and accessible to all citizens of North Carolina, within available resources.

This act became effective August 7, 2009. (SP)

Optometrist on County Board of Health / Abolish State Board of Osteopathic Examination and Registration

S.L. 2009-447 (HB 951) pertains to the appointment of an optometrist to a county board of health and the abolishment of the State Board of Osteopathic Examination and Registration.

The law requires the county board of commissioners to appoint a licensed optometrist to the county board of health. Previously all members of the board, including the licensed optometrist, were required to be residents of the county. The act provides that in the event that a licensed optometrist who is a resident of the county is not available for appointment, the county commissioners have the option either to appoint a licensed optometrist who is a resident of another county, or a member of the general public.

The act repeals Article 7 of Chapter 90 of the General Statutes which abolishes the State Board of Osteopathic Examination and Registration. The North Carolina Medical Board licenses doctors, including Doctors of Osteopathic Medicine.

This act became effective August 7, 2009. (TM)

Mental Health Changes

S.L. 2009-451, Sec. 10.12 (SB 202, Sec. 10.12) makes a number of changes to the system of mental health, developmental disabilities, and substance abuse services reform within the State of North Carolina:

- **Service Dollar Allocation for Non-Single Stream Local Management Entities (LMEs). –** Section 10.12(a) directs the Department of Health and Human Services (Department) to distribute to non-single stream LMEs at least 1/12th 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.
- **Local Inpatient Psychiatric Beds or Bed Days. –** Section 10.12(b) allocates, of funds appropriated to the Department, $20,121,644 for the 2009-2010 fiscal year and $20,121,644 for the 2010-2011 fiscal year for the purchase of local inpatient psychiatric beds or bed days.
- **LME Mergers. –** Section 10.12(c) extends a prohibition on involuntary LME mergers and consolidation of administrative functions until January 1, 2010, with an exception for mergers initiated by LMEs which do not meet catchment area requirements of G.S. 122C-115, or mergers initiated voluntarily by contiguous LMEs.
- **Supports Intensity Scale Assessment Tool Pilot Project. –** Section 12(f) directs the Department to continue implementation of the Supports Intensity Scale assessment tool pilot project if the pilot has demonstrated effectiveness and validity. The Department must report on the pilot's progress to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services; the House of Representatives Appropriations Subcommittee on Health and Human Services; the Senate Appropriations Committee on Health and Human Services; and the Fiscal Research Division by May 1, 2010. .

This section became effective July 1, 2010. (SP)

Local Management Entities Funds for Substance Abuse Services

S.L. 2009-451, Sec. 10.15 (SB 202, Sec. 10.15) encourages Local Management Entities (LMEs) to use a portion of funds appropriated for substance abuse services to support prevention and education activities. LMEs may use up to 1% of funds available for substance abuse services to provide nominal incentives for consumers achieving specified treatment benchmarks. LMEs

must consult with Treatment Accountability for Safer Communities (TASC) to improve offender access to substance abuse treatment. Special emphasis is to be placed on intermediate punishment offenders, community punishment offenders at risk for revocation, and Department of Correction releasees who have completed substance abuse treatment while in custody. The Department of Health and Human Services must allocate $300,000 in additional funds to TASC to provide substance abuse services for adult offenders and to increase the number of TASC case managers. The funds must be allocated to TASC before funds are allocated to LMEs for mental health services, substance abuse services, and crisis services. LME's must consult with the local drug treatment court team in providing drug treatment services and selecting treatment providers. A single treatment provider may be chosen for non-Medicaid eligible drug treatment court participants only, and a single provider may be chosen to work with all of the non-Medicaid eligible drug treatment court participants in a single group. During the 52-week program, participants must receive an array of treatments and aftercare services that meet the participant's level of need, including step-down services that support continued recovery.

This section became effective July 1, 2009. (BR)

Total Quality Management

S.L. 2009-451, Sec. 10.16 (SB 202, Sec. 10.16) directs the Secretary of the Department of Health and Human Services to implement a Total Quality Management Program in hospitals and other State Facilities for the purpose of providing a high level of customer service by well-trained staff throughout the organization. Staff at all levels of the organization must be involved in the program, and staff committees composed of rank and file employees must be created to evaluate policy changes and identify training opportunities and other improvements. The Department must submit a report of the status of the program, including implementation within facilities, to the Senate Appropriations Committee on Health and Human Services; the House of Representatives Appropriations Subcommittee on Health and Human Services; the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services; and the Fiscal Research Division not later than March 1, 2010.

This section became effective July 1, 2009. (BR)

Allocations of State Funds to Local Management Entities

S.L. 2009-451, Sec. 10.19A (SB 202, Sec. 10.19A) as amended by S.L. 2009-575, Sec.10 (HB 836, Sec. 10) directs the Department of Health and Human Services to reduce the allocation of State funds to each Local Management Entity (LME) as necessary to achieve budget reductions. The Department may give consideration to the LME's unrestricted fund balance and access to supplemental funding of services without impairing its financial stability. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services is directed to track fund balance usage of each LME by requiring quarterly reports in a standard format.

This section became effective July 1, 2009. (SP)

Western Regional Maintenance Operations

S.L. 2009-451, Sec. 10.21A (SB 202, Sec. 10.21A) directs the Department of Health and Human Services to develop a plan for western regional maintenance operations focusing on decentralizing operations, direct assignment of staff to facilities which report to designated supervisors, general maintenance workers made available to each organization to allow for the completion of simple tasks without requiring work orders from a central location, and the sharing of equipment and expertise to the extent possible by the maintenance programs of each facility.

The section also directs the Department to decentralize the maintenance activities at the Butner facilities. The Department must report on the implementation of these changes to the

Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than October 1, 2009.

This section became effective July 1, 2009. (BR)

State Funds Thomas S. Recipients

S.L. 2009-451, Sec. 10.21B (SB 202, Sec. 10.21B) provides that former Thomas S. recipients and Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities (CAP-MR/DD) recipients are not eligible for any State-funded services except those services for which there is not a comparable service in the CAP-MR/DD waiver and are limited to guardianship, room and board, and time-limited supplemental staffing to stabilize residential placement. Former Thomas S. recipients currently living in community placements may continue to receive State-funded services.

This section became effective July 1, 2010. (SP)

Community-Focused Eliminating Health Disparities Initiative

S.L. 2009-451, Sec. 10.23 (SB 202, Sec. 10.23) provides that funds appropriated in the 2009 Appropriations Act from the General Fund to the Department of Health and Human Services for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) must be used to provide grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians, as compared to the health status of white persons. These grants must focus on the use of preventive measures to support healthy lifestyles. The areas of focus on health status must be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, homicides, and motor vehicle deaths.

These funds must be awarded as a grant-in-aid to honor the memory of the following recently-deceased members of the General Assembly: Bernard Allen, John Hall, Robert Holloman, Howard Hunter, Jeanne Lucas, Vernon Malone, and William Martin.

The section directs the Department to report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division with respect to the use and distribution of the funds.

This section became effective July 1, 2010. (SP)

Public Health Improvement Plan

S.L. 2009-451, Sec. 10.26 (SB 202, Sec. 10.26) directs the Department of Health and Human Services (Department) to develop a five-year Public Health Improvement Plan (Plan) by March 31, 2010. The Plan will include performance measures to promote uniformity across local health departments (LHDs), best evidence-based services, national performance standards, innovations in public health practice, and reduction of geographic and racial health disparities. The section directs the Secretary to establish and chair the Public Health Improvement Task Force (Task Force), which will include a wide range of interested parties in its membership, and which is charged with developing the Plan.

The section directs the Department to identify Division of Public Health activities and funding associated with the core Plan functions and activities, and to subject funds associated with these activities to a flexible spending formula adopted by the Department beginning in the 2010-2011 fiscal year.

The section allows the Task Force to require county health departments to submit data to the Secretary to assess whether the use of funds is consistent with the health department

achieving Plan performance measures. The Secretary is required to provide biannual reports on the distribution and use of funds to the Governor and the General Assembly, beginning November 15, 2011.

This section became effective July 1, 2009. (BP)

Hospital-Acquired Infections

S.L. 2009-451, Sec. 10.28 (SB 202, Sec. 10.28) directs the Department to apply for federal funds available through the American Recovery and Reinvestment Act of 2009, P.L. 111-5, to implement a mandatory, statewide, hospital-acquired infections surveillance and reporting system.

This section became effective July 1, 2009. (BP)

Men's Health

S.L. 2009-451, Sec. 10.29 (SB 202, Sec. 10.29) requires the Division of Public Health, Department of Health and Human Services to use available funds to delegate to the Chronic Disease Prevention and Control Office the responsibility for ensuring attention to the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department is required to develop strategies to ensure disease prevention and improved quality of life for men by developing a strategic plan to improve health care services, building public health awareness, and developing initiatives within existing programs.

This section became effective July 1, 2009. (TM)

Immunizations Changes

S.L. 2009-451, Sec. 10.29A (SB 202, Sec. 10.29A) limits free, State-supplied, required childhood immunizations administered by local health departments to children who are uninsured or underinsured and have family incomes below 200% of the federal Poverty level at no charge.

This section became effective July 1, 2009. (SP)

Enrollment of Children in Medicaid - Health Choice

S.L. 2009-451, Sec. 10.30 (SB 202, Sec. 10.30) directs the Department of Health and Human Services to increase its efforts to simplify the eligibility determination and recertification process to facilitate enrollment and reenrollment of eligible Medicaid and NC Health Choice individuals. The section specifically directs the Department to explore public awareness campaigns and work with community organizations to alert families of preventive health services available to their children through Medicaid and NC Health Choice, and to pursue enhanced outreach and enrollment available through the federal Children's Health Insurance Program Reauthorization Act (CHIPRA), including funding of outreach and enrollment efforts and implementation of an "Express Lane" using agencies that determine eligibility for other programs (TANF, school lunch, etc.) to enroll children into Medicaid and NC Health Choice. The section also directs the Department to submit a Medicaid State Plan Amendment to take advantage of CHIPRA to provide medical assistance to children and pregnant women who are lawful residents of the United States.

This section became effective July 1, 2009. (BP)

NC Health Choice Transition

S.L. 2009-451, Sec. 10.31 (SB 202, Sec. 10.31), as amended by S.L. 2009-575, Sec. 8, directs the Secretary of Health and Human Services (Secretary) to develop and implement a plan to shift administrative oversight activities of NC Health Choice from the Executive Administrator and Board of Trustees of the State Health Plan to the Division of Medical Assistance not later than July 1, 2010. The section directs the Secretary to report to the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits at least 30 days before effecting this transition.

The section also directs the Office of State Budget and Management, in consultation with the Division of Medical Assistance and other appropriate organizations, to analyze the costs and appropriate staffing levels to manage and implement the transition of NC Health Choice to the Division of Medical Assistance to ensure minimal disruption to the program and adequate Division staffing. The section directs the Office of State Budget and Management to report its staffing recommendations by March 1, 2010, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2009. (BP)

NC Health Choice – Procedures for Changing Medical Policy

S.L. 2009-451, Sec. 10.32 (SB 202, Sec. 10.32) enacts a new provision of Chapter 108A setting forth procedures for changing medical policies applicable to the NC Health Choice Program for Children, that mirrors the procedures currently in place for changes to Medicaid medical coverage policies. The section directs the Department of Health and Human Services (Department) to consult with the Physician Advisory Group, and other appropriate groups, during development of new medical coverage policies. The section requires the Department, at least 45 days before adoption of the policy, to publish the proposed new or changed policies on its website, to notify NC Health Choice providers of the changes and to provide copies of the proposed policy on request. It also directs the Department to accept oral or written comments on the policies for 45 days after its publication. If the proposed medical coverage policy is modified after the comment period, the Department must, at least 15 days before adoption of the new policy, notify all NC Health Choice providers of the proposed policy, provide notice of amendments to proposed policy upon request, and accept oral and written comments during this 15-day period.

This section became effective July 1, 2009. (BP)

NC Health Choice Medical Policy

S.L. 2009-451, Sec. 10.33 (SB 202, Sec. 10.33) prohibits the Department of Health and Human Services from changing medical policy affecting the amount, sufficiency, duration, scope, and providers of NC Health Choice health care services until the Division of Medical Assistance has submitted a five-year fiscal analysis documenting the increased cost of the proposed changes for review by the Department, unless the medical policy change is required for compliance with federal law. The section directs the Department to submit medical policy changes with fiscal impacts of more than $1 million in a given fiscal year to the Office of State Budget and Management and the Fiscal Research Division, and prohibits the Department from implementing the change unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes of more than $1 million that are required for compliance with federal law, the Department is directed to submit the proposed policy and a five-year fiscal analysis to the Office of State Budget and Management before implementing the change. The section directs the Department to provide the Office of State Budget and

Management and the Fiscal Research Division with quarterly reports itemizing all medical policy changes with total requirements of less than $1 million.

This section became effective July 1, 2009. (BP)

NC Health Choice Enrollment

S.L. 2009-451, Sec. 10.34 (SB 202, Sec. 10.34) limits total growth in enrollment of the NC Health Choice Program for the 2009-2010 fiscal year to no more than 9,098 children.

This section became effective July 1, 2009. (BP)

Medicaid Management Information System (MMIS) Funds/Implementation of MMIS

S.L. 2009-451, Sec. 10.41 (SB 202, Sec. 10.41), as amended by S.L. 2009-575, Sec. 10A (HB 836, Sec. 10A) provides the following with regard to the Medicaid Management Information System (MMIS):

- Appropriates $10,765,153 for the 2009-2010 fiscal year and $8,064,128 for the 2010-2011 fiscal year, which must be deposited to the Department of Health and Human Services' information technology budget and used to match federal funds. The Department is required to utilize prior year earned revenues received for the MMIS. If the Department does not receive prior year earned revenues in the amounts authorized, the Department is authorized, subject to approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds to achieve the level of funding specified for MMIS.
- Requires the Department to make full development and replacement of MMIS a top priority, and to ensure that the system can receive and track premiums or other payments required by law, and that the system has compatibility with the administration of the Health Information System. The contract between the Department and the contract vendor must contain detailed cost information and must contain an explicit provision requiring the system have the capability to fully implement NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the Cost Services under the CAP-MR/DD, CAP Children's Program, and all relevant Medicaid waivers, and the Medicare 646 waiver as it applies to Medicaid eligibles. The Secretary of the Department of Health and Human Services is prohibited from signing any contract not containing the required provisions, and the contract is void.
- Requires the Department to engage the services of private counsel to review requests for proposals and to negotiate and review contracts associated with MMIS.
- Requires the Department to develop a comprehensive and accurate schedule for the development and implementation of the MMIS that incorporates federal and State project management and review requirements. The schedule must be submitted to the Chairs of the House of Representatives Committee on Appropriations, the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. Changes to the design, development, and implementation schedule must be reported quarterly in the Department's MMIS reporting requirements. Changes to key milestones must be immediately reported to the Chairs of the aforementioned Committees and the Fiscal Research Division accompanied by a full explanation of the reason for the change.
- Requires the Department to make quarterly reports on changes in the functionality and projected costs of the MMIS. These quarterly reports must begin July 1, 2009, and will be made to the Chairs of the House of Representatives Committee on Appropriations, the House of Representatives Subcommittee on Health and Human

Services, the Chairs of the Senate Committee on Appropriations, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The first quarterly report must contain a final report on the contract award to include total costs and functionality of the MMIS. A copy of the final report on the contract award also must be submitted to the Joint Legislative Commission on Governmental Operations.

- Requires the Department to ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the North Carolina Teachers' and State Employees' Health Plan and that the costs for this capability must be negotiated prior to the award of the contract. The provision requires the Reporting and Analytics Project solution be completed simultaneous to the replacement of the MMIS. When the NC MMIS Program Reporting and Analytics Project and the Division of Health Services Regulation Project are initiated, the Department must include in the reporting cycle outlined above, information on the functionality, schedule and cost.

This section became effective July 1, 2009. (TM)

Enhance Marketing of Public Assistance Availability

S.L. 2009-451, Sec. 10.53 (SB 202, Sec. 10.53) requires the Division of Medical Assistance, Division of Social Services, and county departments of social services, to enhance the marketing of available services including Food and Nutrition Services and Medical Assistance. The goal is to ensure that working families and prospective recipients are aware of these services.

This section became effective July 1, 2009. (TM)

State-County Special Assistance

S.L. 2009-451, Sec. 10.57 (SB 202, Sec. 10.57) adjusts the State-County Special Assistance maximum monthly rate for residents of adult care homes. The section provides that Special Assistance recipients residing in adult care homes on August 1, 1995, will not be affected by an income reduction in the Special Assistance eligibility criteria, and the maximum monthly rate for these residents will be $1,231 per month per resident. As of October 1, 2009, the maximum monthly rate for adult care home residents is $1,182 per resident, unless adjusted by the Department of Health and Human Services. The maximum monthly rate for residents of Alzheimer/Dementia special care units is $1,515, unless adjusted by the Department. The provision allows the Department to review adult care home costs and activities and to seek reimbursement through Medicaid Adult Care Home Personal Care Services (ACH-PCS) for those services that are allowed. Subject to the approval of the Centers for Medicare and Medicaid Services, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. However, the amount of the disregard cannot exceed the difference between the Special Assistance rate prior to the adjustment and the rate after the adjustment and must be used to pay a portion of the cost of ACH-PCS and reduce the Medicaid payment for the individual's personal care services. The Department is required to recommend rates for State-County Special Assistance and for ACH-PCS. The Department must ensure that cost reporting is done for Special Assistance and ACH-PCS to the same standards as apply to other residential service providers. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive Special Assistance funds.

This section became effective July 1, 2009. (TM)

Medicaid

S.L. 2009-451, Sec. 10.58 (SB 202, Sec. 10.58) implements the following changes in State Medicaid operations and funding:

- Completely phases out the county share of nonfederal cost of Medicaid services and of federal Medicare Part D clawback payments.
- Authorizes the Division of Medical Assistance (Division) to undertake cost-containment programs, including volume purchase plans, hospital preadmissions and prior approval for certain surgeries.
- Directs the Division to provide incentives to counties that recover fraudulently spent Medicaid funds.
- Prohibits the Department of Health and Human Services from changing medical policy affecting the amount, sufficiency, duration, and scope of health care services provided, unless the Division has first conducted a five-year fiscal analysis documenting increased costs associated with the change and has submitted its analysis for Departmental review. Requires additional review and approval by the Office of State Budget and Management before implementation of any policy change that would require more than $3 million in any given fiscal year.
- Prescription Drugs – implements the following:
  - Requires that generic rather than brand-name drugs be dispensed, except when the use of the brand-name drug is prescribed as medically necessary.
  - Authorizes the Department to establish authorizations, limitations, and reviews for specific drugs, drug classes, brands or quantities, but prohibits limitations from being placed on brand name drugs in cases where the brand name drug is deemed medically necessary by the prescriber.
  - Sets professional services fee paid for drugs prescribed at higher levels for generic ($5.60) than for brand-name ($4.00) drugs.
  - Prohibits imposition of prior authorization requirements on medications prescribed for treatment of mental illness or HIV/AIDS.
  - Provides the target prescriber has the final decision-making authority to determine which prescription drug to prescribe or refill.
- Provider payments and visits – Limits payment only to Medicaid-enrolled providers that purchase performance bonds or some similar financial guarantee arrangement while allowing for waivers to be granted in certain instances.
- Authorizes the Department, with the approval of the Director of the Budget, to waive service limitations, eligibility requirements, and payment bases to conduct pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs. Also authorizes the Department to establish co-payments for Medicaid services, as permitted by federal law and regulation.

This section became effective July 1, 2009. (SP)

Accelerated Department of Health and Human Services Procurement Process to Achieve Budget Reductions

S.L. 2009-451, Sec. 10.58B (SB 202, Sec. 10.58B) authorizes the Department of Health and Human Services to modify or extend existing contracts or as necessary enter into sole source contracts for the following activities:

- Maximizing technology to increase third-party recovery, increase cost avoidance activities, identify provider overbilling, and other abuse or program integrity activities.
- Implementing prior authorization efforts in imaging and other high-cost services.

- Providing technical assistance to enhance care coordination, analysis, and reports to assess provider compliance and performance.
- Conducting independent assessments.
- Providing technology services to establish physician/provider online attestation reporting and assist Community Care of North Carolina (CCNC) in care management activities.

Any such modifications or contract extensions or sole source contracts must be approved by the Secretary of the Department of Administration and reported to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Office of State Budget and Management.

The Department must report on contract activities undertaken pursuant to this section to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before April 1, 2010.

This section became effective July 1, 2009. (BR)

Medicaid Cost Containment Activities

S.L. 2009-451, Sec. 10.60 (SB 202, Sec. 10.60) authorizes the Department of Health and Human Services to use up to $5 million in the 2009-2010 fiscal year and $5 million in the 2010-2011 fiscal year in Medicaid funds budgeted for program services for administrative activities to contain costs of the Medicaid program, including contracting for services, hiring additional staff, and providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost containment programs. Funds for these Medicaid cost containment activities may be expended only following submission of proposals documenting cost of implementation, anticipated savings, and upon approval the Office of State Budget and Management. The section directs the Department to provide copies of proposals to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The Department must report on methods used and amounts saved, including information relating to implementation and results of fraud detection software, if applicable, by April 1, 2010.

This section became effective July 1, 2009. (BP)

Families Pay Part of the Cost of Services under the Community Alternatives Program Based on Family Income

S.L. 2009-451, Sec. 10.65 (SB 202, Sec. 10.65) requires the Department of Health and Human Services, Division of Medical Assistance, in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and Community Alternatives Program (CAP) stakeholders, to develop a schedule of cost-sharing requirements for families of children with incomes above the Medicaid allowable limit for the costs of their child's Medicaid expenses under the Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities (CAP-MR/DD) and the Community Alternatives Program for Children (CAP-C). The schedule is subject to approval by the Centers for Medicare and Medicaid Services (CMS). Cost-sharing amounts are to be based on a sliding scale of family income and take into account the impact on families with more than one child in the CAP programs. Other states' implementation of cost-sharing in their CAP programs must be taken into consideration in setting the schedule. Monthly deductibles may be used as a means of implementing this cost-sharing. The Department must provide for at least one public hearing and other opportunities for individuals to comment on the imposition of cost-sharing under the CAP program schedule.

The Division of Medical Assistance is directed, in collaboration with the Controller's Office of the Department of Health and Human Services, the Division of Information Resource Management (DIRM), and the new vendor of the replacement Medicaid Management Information System, to develop business rules, program policies and procedures, and define relevant technical requirements.

The Department must report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, and to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division prior to seeking approval from CMS, but not later than October 1, 2009.

This section became effective July 1, 2009. (BR)

Implementation of Tiers for Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities

S.L. 2009-451, Sec. 10.65A (SB 202, Sec. 10.65A) directs the Department of Health and Human Services (Department), for the purposes of improving efficiency in the expenditure of available funds and effectively identifying and meeting the needs of Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities (CAP-MR/DD) eligible individuals, to submit a plan for the implementation of Tiers 1 through 4 of the CAP-MR/DD program. The Department is authorized to develop an application to the Centers for Medicare and Medicaid services for additional Medicaid waivers for Tiers 2 and 3 of the CAP-MR/DD program.

The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services is directed to review the services funded through the Division and received by individuals with developmental disabilities who are not currently being served through the CAP-MR/DD waiver and determine:

- If those individuals could be better served through the CAP-MR/DD Tier 1 waiver.
- If the State appropriations currently funding services for those individuals would be sufficient to provide the nonfederal match for those individuals if they became eligible for the CAP-MR/DD Tier 1 waiver.

Of the funds appropriated to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and currently used for State-funded services for people with CAP slots, $8 million is transferred for the 2009-2010 fiscal year to the Division of Medical Assistance. Of these funds, the sum of $4 million must be used by the Division of Medical Assistance for Tier 1 CAP-MR/DD slots, and the remaining $4 million must be used by the Division of Medical Assistance to ensure that only a partial freeze of CAP slots must be implemented for the 2009-2011 fiscal biennium.

The Department is directed to report on the number and geographic distribution of CAP slots by LME and implement a plan to equitably distribute all CAP-MR/DD slots among LMEs.

This section became effective July 1, 2009. (SP)

Preferred Drug List Program

S.L. 2009-451, Sec. 10.66 (SB 202, Sec. 10.66) provides, in the event insufficient savings are realized from enhancing the utilization management of the Prescription Advantage List, increasing the utilization of generic drugs in place of brand-name drugs, and increasing rebate collections on generic drugs, the Department of Health and Human Services (Department) must establish and implement a preferred drug list program under the Division of Medical Assistance. The Department is also directed to:

- In consultation with the Prescription Advisory Group, adopt and publish policies and procedures relating to the preferred drug list. Medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome must not be subject to consideration for inclusion on the preferred drug list.
- Maintain an updated preferred drug list in electronic format and make the list available to the public on the Department's Internet Web site.
- Enter into a multistate purchasing pool, negotiate directly with manufacturers or labelers, contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program, or effectuate any combination of these options in order to achieve the lowest available price for such drugs under the program.

This section becomes effective if the Department cannot demonstrate by June 1, 2010, that $25 million in prescription drug savings have been realized by the methods enhancing the utilization management of the Prescription Advantage List, increasing the utilization of generic drugs in place of brand-name drugs, and increasing rebate collections on generic drugs outlined in subsection (a) of this section. (SP)

Authorize the Division of Medical Assistance to take Certain Steps to Effectuate Compliance with Budget Reductions in the Medicaid Program

S.L. 2009-451, Sec. 10.68A(a) (SB 202, Sec. 10.68A(a)), as amended by S.L. 2009-575 (HB 836), authorizes the Division of Medical Assistance (DMA), Department of Health and Human Services (Department), to take the following actions, notwithstanding a provision to the contrary, to achieve budget reductions to the Medicaid program:

Electronic Transactions.

- Within 60 days of notification of its procedures, Medicaid is required to follow the Department's established procedures for securing electronic payments. Additionally, no later than September 1, 2009, the Department must cease routine provider payments by check.
- Effective September 1, 2009, all Medicaid providers must file claims electronically to the fiscal agent. Nonelectronic claims submission may be required when it is in the best interest of the Department.
- Effective September 1, 2009, enrolled Medicaid providers must submit Preadmission Screening and Annual Resident Reviews (PASARR) through the Department's Web-based tool or through a vendor with interface capability to submit data into the Web-based PASARR.

Clinical Coverage. – Requires DMA to amend applicable clinical policies and submit applicable State Plan amendments to the Centers for Medicare and Medicaid Services (CMS) to implement the budget reductions authorized in the following clinical coverage areas in the act:

- Consolidate and reduce Targeted Case Management and case management functions bundled within other Medicaid services.
- Take appropriate action to lower the cost of HIV case management, including tightening service hours and limiting administrative costs, and maintain HIV case management as a stand-alone service outside of departmental efforts to consolidate case management services.
- On or before October 1, 2009, report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the plan to transition children out of mental health residential therapeutic camps.

Medicaid Personal Care Services. – Requires that upon enactment of the act, DMA must implement the following new criteria for personal care services (PCS):

- Independent assessment by an entity that does not provide direct PCS services for evaluation of the recipient prior to initiation of service. The independent assessment will determine the qualifying Activities of Daily Living (ADL), the level of assistance required, and the amount and scope of PCS to be provided, according to policy criteria.
- Independent assessment or review from the assigned Community Care of North Carolina (CCNC) physician of the continued qualification for PCS services under the revised PCS policy criteria.
- Establishment of time limits on physician service orders and reauthorization in accordance with the recipient's diagnosis and acuity of need.
- Addition of the following items to the list of tasks that are not covered by this service: Nonmedical transportation, errands and shopping, money management, cueing and prompting, guiding, or coaching.
- Online physician attestation of medical necessity.

If sufficient reduction in cost is not achieved with the revised policy, the Secretary must direct DMA to further modify the policy to achieve targeted cost savings. Recipients currently receiving PCS services must be reviewed utilizing the above criteria, and those recipients not meeting the new criteria must be terminated from the service within 30 days of the review. The Department is required to review usage of PCS in adult care homes to determine if overuse is occurring and report findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before December 1, 2009.

Mental Health/Developmental Disability/Substance Abuse (MH/DD/SA) Personal Care and Personal Assistance Services Provision. – Provides a denial, reduction, or termination of Medicaid-funded personal care services must result in a similar denial, reduction, or termination of State-funded MH/DD/SA personal care and personal assistance services.

Community Support and other MH/DD/SA services. – Requires the Department to transition community support child and adult individual and group services to other defined services on or before June 30, 2010. The Division of Medical Assistance and the Division of MH/DD/SA must take the steps necessary for the Medicaid and the State-funded community support program to provide for transition and discharge planning to recipients currently receiving community support services. The following is required:

- The Department must submit to CMS:
  - Revised service definitions that separate case management functions from the Community Support definition.
  - A new service definition for peer support services for adults with mental illness and/or substance abuse disorders.
- No new admissions for community support individual or group will be allowed during this transition period, unless the Department determines appropriate alternative services are not available, in which case limited community support services may be provided during the transition period. Local Management Entities (LMEs) will be responsible for referring eligible consumers to appropriate alternative services.
- Authorizations currently in effect as of the date of enactment of this act remain valid, but any new authorization or subsequent reauthorization is subject to the provisions of this act.
- No community support services will be provided in conjunction with other enhanced services. Professional-level community support may be provided in conjunction with residential Level III and IV to assist in recipient discharge planning until CMS approves the new case management definition. Up to a maximum of 24 hours of case management (professional level) functions may be provided over a 90-day authorization period as approved by the prior authorization vendor.

- The current moratorium on community support provider endorsement will remain in effect.
- A provider of community support services whose endorsement has been withdrawn, or whose Medicaid participation has been terminated, is not entitled to payment during the period the appeal is pending, and the Department must make no payment to the provider during that period. If the final agency decision is in favor of the provider, the Department must remove the suspension, commence payment for valid claims, and reimburse the provider for payments withheld during the period of appeal.
- Effective 60 days from the enactment of the act, the paraprofessional level of community support must be eliminated, and from this date the Department must not use any Medicaid or State funds to pay for this level of service.
- Thirty days after the enactment of the act, any concurrent request must be accompanied with a discharge plan. Submission of the discharge plan will be a required document for a request to be considered complete. Failure to submit the discharge plan will result in the request being returned as "unable to process." Discharge from the service must occur within 90 days after the submission of the discharge plan.
- Any community support provider that ceases to function as a provider must provide written notification to DMA, the LME, recipients, and the prior authorization vendor 30 days prior to closing of the business.
- Medical and financial record retention is the responsibility of the provider and must be in compliance with the record retention requirements of their Medicaid provider agreement or State-funded services contract. Records also must be available to State, federal, and local agencies.
- Failure to comply with notification, recipient transition planning, or record maintenance must result in suspension of further payment until such failure is corrected. Failure to comply must result in denial of enrollment as a provider for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees, or individuals or entities having a direct or indirect ownership interest or control interest of 5% or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

Community Support Team. – Authorization for a Community Support Team must be based upon medical necessity as defined by the Department and cannot exceed 18 hours per week. DMA is required to do an immediate rate study of the Community Support Team to bring the average cost of service per recipient in line with Assertive Community Treatment Team (ACTT) services. DMA also is required to revise provider qualifications and tighten the service definition to contain costs in this line item. Not later than December 1, 2009, DMA must report its findings on the rate study and any actions it has taken to conform with this subdivision to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Mental Health Residential. – Directs the Department to restructure the Medicaid child mental health, developmental disabilities, and substance abuse residential services to ensure total expenditures are within budgeted levels. The Divisions of Medical Assistance and Mental Health, Developmental Disabilities, and Substance Abuse Services are required to establish a team inclusive of providers, LMEs, and other stakeholders to assure effective transition of recipients to appropriate treatment options. The restructuring must address all of the following:

- Submission of the therapeutic family service definition to CMS.
- Reexamination of entrance and continued stay criteria for all residential services.
- Require all existing residential providers or agencies to be nationally accredited within one year of enactment of this act.

- Limit the length of stay to no more than 120 days.
- For Level III and IV group homes, before a child can be admitted for placement one or more of the following must apply:
  - Placement is from a higher-level placement, such as a psychiatric residential treatment facility or inpatient.
  - Multi-systemic therapy or intensive in-home therapy has been unsuccessful.
  - The Child and Family Team has reviewed all other alternatives and recommends Level III or IV placement due to maintaining health and safety.
  - A transition or discharge plan is submitted as part of the request.
- Submission of a discharge plan is required in order for the request to be complete.
- Any provider that ceases to function as a provider must provide written notification to DMS, the LME, recipients, and the prior authorization vendor 30 days prior to closing the business.
- Record maintenance is the responsibility of the provider, must be available to appropriate agencies, and must be in compliance with record retention requirements.
- Failure to comply with notification, recipient transition planning, or record maintenance is grounds for withholding payment. A provider (including its officers, directors, agents, or managing employees, or individuals or entities having a direct or indirect ownership interest or control interest of 5% or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

The Department must report to the Joint Legislative Oversight Committee on Mental Health Developmental Disabilities, and Substance Abuse Services on its plan for transitioning children out of level III and level IV group homes by October 1, 2010.

Reduce Medicaid rates. – Directs the Secretary to reduce Medicaid provider rates. The rate reduction applies to all Medicaid private and public providers with the following exceptions:

- Federally qualified health clinics.
- Rural health centers.
- State institutions.
- Hospital outpatient.
- Pharmacies.
- Noninflationary components of the case-mix reimbursement system for nursing facilities.

Additionally, Medicaid rates predicated upon Medicare fee schedules must follow Medicare reductions but not Medicare increases unless federally required.

Medicaid identification cards. – Directs the Department to issue Medicaid identification cards to recipients on an annual basis with quarterly updates.

Case Management Services. – Directs the Department to develop a plan for the consolidation of case management services. The plan must address the time line and process for implementation, the vendors involved, the identification of savings, and the Medicaid recipients affected by the consolidation. The consolidation must not apply to HIV case management. The Department is required to report on the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

Prior to adoption of new or amended policies. – The Department is required to do the following at least 30 days prior to the adoption of new or amended medical coverage polices necessitated by the reductions to the Medicaid program:

- Publish the proposed new or amended medical coverage policies on the Department Web site, including an invitation for written comments.
- Notify via direct mail the members of the Physician Advisory Group of the proposed policies.

- Update the policies published on the Web to reflect any changes made as a result of written comments.
- Provide written notice to recipients about changes in policy.

Implementation. – The Department is prohibited from implementing any actions directed by the act if determined that it would jeopardize the receipt of American Recovery and Reinvestment Act (ARRA) funds.

This section became effective July 1, 2009. (SP) (TM)

Medicaid Waivers

S.L. 2009-451, Sec. 10.72A (SB 202, Sec. 10.72A) directs the Department of Health and Human Services to report on the feasibility and efficacy of applying for Medicaid waivers from the Centers for Medicare and Medicaid Services (CMS). The report must contain recommendations on the following waivers and the reasons certain waivers should be pursued:

- An 1115 waiver to permit individuals that test positive for HIV and have incomes at or below 200% of the federal poverty level access to Medicaid services.
- An 1115 waiver or other available Medicaid options to provide interconceptional coverage to low-income women with incomes below 185% of the federal poverty guidelines who have given birth to a high-risk infant.
- A 1915(c) waiver to permit individuals who sustain traumatic brain injury after age 22 to access home and community-based Medicaid services.
- A waiver to prevent a Medicaid recipient from losing Medicaid eligibility due to Social Security and Railroad Retirement cost-of-living adjustments and federal poverty level adjustments.

The Department must report its recommendations for each waiver, including the estimated time needed to prepare the waiver application and the earliest date upon which the waiver, if approved by CMS, could be implemented, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Fiscal Research Division, and the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by March 1, 2010.

This section became effective July 1, 2009. (SP)

Medicaid Provider Payment Suspension

S.L. 2009-451, Sec. 10.73A (SB 202, Sec. 10.73A) authorizes the Department of Health and Human Services to suspend payment to any Medicaid provider against whom the Division of Medical Assistance has instituted a recoupment action, termination of the Medicaid Administrative Participation Agreement, or referral to the Medicaid Fraud Investigations Unit. Suspension of payment is in the amount under review and continues during the pendency of any appeal filed. The act prohibits the Department from making any payment to providers until the provider has entered into an approved payment plan, or all outstanding Medicaid recoupments, assessments, or overpayments have been repaid in full to the Department, including applicable penalty and interest charges.

This section became effective July 1, 2009. (BP)

Technical and Organizational Changes – Certain Department of Health and Human Services Facilities

S.L. 2009-462 (HB 456) makes technical and organizational changes to existing law regarding the licensure and inspection of facilities for aged and disabled individuals. The act reorganizes Chapter 131D of the General Statutes by:

- Creating Article 1B. Licensing of Maternity Homes and moving relevant statutory language under this new article.
- Renaming Article 1. Adult Care Homes, and creating two Parts – Part 1. Licensing, and Part 2. Other Laws Pertaining to the Inspection and Operation of Adult Care Homes.
- Incorporating within the new statutory construction, the content of S.L. 2008-166 pertaining to multiunit assisted housing with services (MAHS) fees.
- Making conforming changes within other statutory chapters to reflect the changes made to Chapter 131D.

The language pertaining to multiunit assisted housing with services became effective January 1, 2010; the remainder of the act became effective October 1, 2009. Licenses issued pursuant to G.S. 131D-2 remain effective until the date of annual renewal, at which time Part 1 of Article 1 of Chapter 131D of the General Statutes applies and in all other respects, beginning October 1, 2009; Part 1 of Article 1 of Chapter 131D applies to the operation of facilities currently licensed under G.S. 131D-2. (TM)

Provider Credentials/Insurer/Provider Contract

S.L. 2009-487 (HB 1297) requires an insurer that provides health benefit plans and credentials providers for its networks, to issue temporary credentials to the provider if the insurer has not approved or denied the provider credentialing application within 60 days and the provider has submitted a written request to the insurer. To be eligible for these temporary credentials, the applicant must have a valid, unrestricted North Carolina professional or occupational license to provide the health care services to which the credential will apply. The temporary credentials remain effective until the insurer approves or denies the provider's credentialing application. Applicants reporting a history of medical malpractice claims, substance abuse or mental health issues, or Medical Board discipline are not eligible to be issued temporary credentials.

The act amends S.L. 2009-352 (Health Plan Provider Contracts/Transparency) as follows:

- Inserts a definition for the term health care provider.
- Allows for alternate means for the providing notice and for determining the date of receipt of notice.
- Allows for providers and insurers to negotiate contract terms that provide for: (i) mutual consent to amendments, (ii) a process for reaching mutual consent, or (iii) alternative notice contacts.

The act also amends S.L. 2009-145 (Fairness in Certificate of Need (CON) Determinations/Inflation Adjustment) to allow for one or more of the identified purposes to be accomplished by the capital expenditure that is exempted from the CON process by that act.

The act exempts hospitals owned or controlled facilities that are classified as: (i) Business Occupancy and (ii) located more than 30 feet from a hospital facility that is classified as Health Care Occupancy or Ambulatory Health Care Occupancy, from the term "hospital" (and from the hospital licensure process as well). The act conforms statutory provisions with current administrative code provisions exempting from routine Division of Health Services Regulation State licensure inspections, locations that have been added to a hospital's accreditation by an accrediting body recognized by the Centers for Medicare and Medicaid Services, but allows the Department to conduct inspections of these locations as it deems necessary.

The temporary credentialing provision of this act became effective January 1, 2010. The health provider contract provision of this act became effective January 1, 2010, and applies to health benefit plan contracts between health care providers and health benefit plans or insurers delivered, amended, or renewed on or after that date. The remainder of the act became effective August 26, 2009. (BP)

Residential Lead-Based Paint Hazards/Renovations

S.L. 2009-488 (HB 1151). See **Environment and Natural Resources**.

Cigarette Safety Amendments/Department of Health and Human Services Electronic Supervision Pilot

S.L. 2009-490 (SB 884) provides the Fire-Safety Standard and Firefighter Protection Act is implemented in accordance with the New York Fire Safety Standards for Cigarettes as it read on August 24, 2007.

The act also establishes a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot program must be implemented at a facility currently authorized to waive certain awake staff supervision requirements and directs the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules establishing standards for electronic monitoring and alternate staffing requirements during client sleep hours.

This act became effective January 1, 2010. (SP)

Amend Public Health – Related Laws

S.L. 2009-501 (HB 1002) amends the communicable disease detention provision of the General Statutes to change the contact that may substantiate an order to detain a defendant for investigation and testing for the AIDS virus or Hepatitis B from "was exposed" to "had a nonsexual exposure." The act also amends the provision setting forth communicable disease investigation and control measures to authorize "other persons" to permit local health directors or the State Health Director to examine medical or other records pertaining to the diagnosis, treatment, or prevention of communicable diseases, or the investigation of known or suspected outbreaks of communicable diseases.

This act became effective August 26, 2009. (SP)

Cancer Patient Assistance

S.L. 2009-502 (HB 1020) requires the Department of Health and Human Services to establish a cancer patient navigation pilot program to provide education and assistance with the management of cancer. At a minimum the program must:

- Serve breast and cervical cancer patients across the State.
- Employ a multidisciplinary team to identify and assist patients with access to health care, financial and legal assistance, transportation, and other supports.
- Work with an existing cancer service agency not affiliated with a particular health care institution.

The act directs the Department to adopt rules and to begin an initial implementation of the state-wide pilot in Guilford and Mecklenburg Counties. The Department must report its progress on the implementation of the program by May 1, 2010.

This act became effective August 26, 2009. (SP)

General Statutes Clarifying Correction – Medicaid Appeals Process

S.L. 2009-526, Sec. 2 (HB 191, Sec. 2) modifies the Medicaid appeals process for recipients.

The section reduces the minimum days prior to the effective date of an adverse action that the Department of Health and Human Services (Department) must provide proper notice and provides for an appellant's right to services at the level or manner prior to the appeal.

The section also makes the following changes:

- Directs the "Office of Administrative Hearings" (OAH) to hear cases with 55 days of appeal.
- Provides hearings must be conducted telephonically or by video conference, unless the appellant requests an in-person hearing. In-person hearings are to be in Wake County, but can be moved to the appellant's county of residence upon good cause shown.
- Stipulates continuances must be granted only in accordance with NCAC rules (currently NCAC03.0118 would govern), continuances are not to be granted on the day of the hearing, and failure to appear after proper notification will result in an immediate dismissal.
- Modifies some direction to the Department relating to required mediation.
- Authorizes petitioner to submit new evidence obtained prior to and subsequent to the Department's action.
- Provides that in each adverse action, the hearing must determine if the Department substantially prejudiced the rights of the appellant by exceeding its authority, acting erroneously, failing to use proper procedure, acting arbitrarily or capriciously, or failing to act as required by law.

The section modifies the appeal process for community support providers as follows:

- Authorizes a hearing officer to take testimony and receive evidence by telephone or electronic means.
- Removes a hearing officer's authority to subpoena the attendance of a witness.
- Modifies what the Department must provide as a record of the hearing if the provider petitions for judicial review.
- Requires a final decision to be rendered with 180 days from the date of filing of the petition.

This section became effective August 26, 2009. (SP)

Clarifying Changes to State Law – Medicaid Appeals Process

S.L. 2009-550, Sec. 1.1 (HB 274, Sec. 1.1). See **This Chapter** (S.L. 2009-526 Sec. 2).

Clarifying Changes to State Law – Prohibit Smoking in Certain Public Places

S.L. 2009-550, Sec. 6 (HB 274, Sec. 6) amends the definition of restaurant in public health law to clarify that the term applies to food or lodging establishments and authorizes the Commission for Public Health to adopt rules to implement the recently-enacted provisions governing smoking in public places, providing the rules may not become effective before January 2, 2010.

This section became effective August 28, 2009. (BP)

Qui Tam / Liability for False Claims

S.L. 2009-554, Secs. 2 and 3 (HB 1135, Secs. 2 and 3) authorizes the Attorney General, acting through the Medicaid Investigations Unit of the Department of Justice, to issue subpoenas to produce records of corporations or other entities in connection with criminal investigations of health care providers. The act amends the existing law governing Medicaid provider fraud to make it a Class H felony to obtain money or property by false pretenses, and specifies that a conspiracy to commit those acts is punishable as a Class I felony. The act also makes it unlawful to obstruct an investigation or to conceal, alter, or destroy records with the intent to defraud.

The subpoena provision became effective August 28, 2009. The criminal offense provisions became effective December 1, 2009, and apply to offenses committed on or after that date. (BP)

Medicaid Utilization Management of Outpatient Imaging Services

S.L. 2009-575, Sec. 10.68B (HB 836, Sec. 10.68B) authorizes the Department of Health and Human Services (Department) to contract for utilization management of the following outpatient imaging services: CT, PET, PET-CT, MRI, ultrasound, echocardiogram, nuclear imaging (including nuclear cardiography), and angiography, and specifically prohibits the contracts from including any imaging services for hospital inpatients or patients referred through a hospital emergency department.

The section requires vendors contracting with the Department for these services to satisfy the following conditions:

- Ensure patients obtain medically appropriate imaging services.
- Be accredited by a national utilization management accrediting organization.
- Before contracting with the Department, disclose any financial or other relationship with facilities or providers whose services would be subject to the vendor's utilization management.

The section requires these contracts to assure that Medicaid enrollees continue to receive medically-necessary imaging services, protect enrollees from harmful exposure through excessive imaging, and minimize disruption to clinical services. The section provides that initial contracts may be for no longer than two years, and requires that before new requests for proposals or contract extensions are made, the Department must:

- Consult with providers affected by the imaging management to evaluate program administration and accomplishments, and explore potentially beneficial new models or technologies.
- Report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division, on the effect the vendor's utilization management services have had on consumer safety and access, providers, cost savings, utilization trends, and comparison with national norms and practices.

This section became effective July 1, 2009. (BP)

Studies

New / Independent Studies / Commissions

Autism Spectrum Disorder and Public Safety Study

S.L. 2009-451, Sec. 10.21D (SB 202, Sec. 10.21D) establishes the Joint Study Committee on Autism Spectrum Disorder and Public Safety to study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The provision does not provide for a total number of committee members, but provides that members will be appointed by the President Pro Tempore of the Senate and Speaker of the House of Representatives. In addition to availability of appropriate education and training, the Committee may examine other issues deemed relevant to Autism Spectrum Disorder and public safety. The Committee may submit an interim report to the members of the Senate and House of Representatives on or before May 1, 2010. The Committee must submit a final report, including any proposed legislation, to the members of the Senate and House of Representatives on or before December 31, 2010. The Committee will terminate on December 31, 2010, or upon filing a final report, whichever comes first.

This section became effective July 1, 2009. (TM)

Legislative Task Force on Childhood Obesity

S.L. 2009-574, Part XLIX (HB 945, Part XLIX) creates the 12-member Legislative Task Force on Childhood Obesity (Task Force), consisting of six members of the House of Representatives and six members of the Senate, and directs the Task Force to consider and recommend strategies for addressing the problem of childhood obesity by encouraging healthy eating and increased physical activity through:

- Early childhood intervention.
- Childcare facilities.
- Before and after-school programs.
- Physical education and physical activity in schools.
- Higher nutrition standards in schools.
- Increased access to recreational activities for children.
- Community initiatives and public awareness.
- Other means.

The Task Force must submit a final report, including any recommendations, to the 2010 Regular Session of the 2009 General Assembly. The Task Force will terminate on May 1, 2010, or upon the filing of its final report, whichever occurs first.

This part became effective September 10, 2009. (SB)

Legislative Research Commission

Issues Related to Health and Human Services

S.L. 2009-574, Secs. 2.26 through 2.36 (HB 945, Sec. 2.26 through 2.36) authorizes the Legislative Research Commission to study:

- Necessity for and merits of providing health insurance coverage for the diagnosis and treatment of autism spectrum disorders.
- Impact of smoking prohibitions on foster care home availability.

- Income requirements for receiving Medicaid and Community Alternatives Program (CAP) benefits.
- Mental health involuntary commitment statutes and issues concerning the health and safety of an individual and others during the individual's examination.
- Feasibility of establishing a program to provide health care access to uninsured individuals and their families (Cover NC).
- Statewide Trauma System statutes and State regulations, including issues surrounding funding and service delivery.
- Pediatric palliative and end-of-life care in North Carolina.
- Accessibility of the Controlled Substances Reporting System to sheriffs and deputy sheriffs.
- Chiropractic services and cost-sharing under the State Health Plan for Teachers and State Employees.
- Hospitals and health care organizations' current use of mandatory nurse overtime as a staffing tool.
- How to improve people's health and contain health care costs by examining the comparative effectiveness of medical treatments and prescription drugs.

If the Commission undertakes these studies, the Commission may report any findings and recommended legislation to the 2010 Regular Session of the 2009 General Assembly upon its convening.

This part became effective September 10, 2009. (SB)

Referrals to Existing Commissions/Committees

Joint Legislative Health Care Oversight Committee

S.L. 2009-574, Part III (HB 945, Part III) authorizes the Joint Legislative Health Care Oversight Committee to study the following issues and report its findings with any recommended legislation to the 2010 Regular Session of the 2009 General Assembly upon its convening:

- Do Not Resuscitate (DNR) orders issued by an attending physician in the absence of a declaration for natural death.
- Issues related to health care provider credentialing, notice, and contract negotiation provisions for health benefit plans and provider contracting, exemption criteria for certificate of need, inspection practices of hospital outpatient locations, and related matters.
- Temporary waiver of a license for a medical, dental, nursing, or pharmacy professional if the professional is properly licensed in another state and only applying to professionals volunteering with a nonprofit entity providing medical, dental, nursing, or pharmacy services in this State.

This part became effective September 10, 2009. (SB)

North Carolina Midwifery Joint Committee

S.L. 2009-574, Part XXI (HB 945, Part XXI) authorizes the North Carolina Midwifery Joint Committee (Committee) to collaborate with the North Carolina Obstetrical and Gynecological Society, the North Carolina Section of the American College of Obstetricians and Gynecologists, and other interested parties, to develop and propose a methodology for licensing Certified Professional Midwives (CPMs) in this State. The proposed methodology must establish standards for education and training of CPMs that are at least as stringent as those put forth by the American Midwifery Certification Board and require that CPMs maintain insurance liability coverage regardless of the setting in which they practice. This Part also directs the Commissioner of Insurance to provide the Committee with information relating to the access and

availability of liability insurance coverage for midwives in North Carolina. The Committee may report its recommendations and legislative proposals to the 2010 Regular Session of the 2009 General Assembly on or before its convening.

This part became effective September 10, 2009. (SB)

Referrals to Departments, Agencies, Etc.

Evaluation of Consolidation of Administrative Functions of County Departments of Social Services

S.L. 2009-451, Sec. 10.52 (SB 202, Sec. 10.52), as amended by S.L. 2009-575, Sec. 11 (HB 836, Sec. 11), requires the North Carolina General Assembly's Program Evaluation Division to study the consolidation of administrative functions among county departments of social services. The Division is required to identify opportunities for functional consolidation, affected administrative functions, estimated cost savings, and requisite policy changes. The Division is prohibited from consolidating the administrative functions of county departments of social services, except as directed by an act of the General Assembly. By December 1, 2010, the Program Evaluation Division is required to report findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2009. (TM)

Department of Health and Human Services to Study the Feasibility of Establishing a School-Based Influenza Vaccination Pilot Program

S.L. 2009-574, Part XIII (HB 945, Part XIII) authorizes the Division of Public Health, in the Department of Health and Human Services, to study the feasibility of establishing a school-based influenza vaccination pilot program in order to vaccinate all children ages 6 months to 18 years against influenza, in accordance with the recommendations of the Advisory Committee on Immunization Practices. In conducting the study, the Division may:

- Examine the costs and benefits of establishing a school-based influenza vaccination program.
- Identify barriers to implementing this program and recommend strategies for removing barriers.
- Determine the fiscal impact to the State of the proposed pilot program.

By May 1, 2010, the Department may report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Governor.

This part became effective September 10, 2009. (SB)

Department of Health and Human Services to Study Provider Medical Rates to Determine the Equity of Existing Rates Among Providers

S.L. 2009-574, Part XIV (HB 945, Part XIV) authorizes the Division of Medical Assistance, in the Department of Health and Human Services, to study rate equity for medical providers. The study may include:

- A review of the cost of providing service, capital costs, and medical malpractice insurance.
- A review of medical providers for a stand-alone payment method, including the consideration of a private consultant to perform the rate-setting process.

No later than December 1, 2009, the Department may report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This part became effective September 10, 2009. (SB)

Department of Health and Human Services to Study the Feasibility of Requiring Long-Term Care Facilities to Require Applicants for Employment and Certain Employees to Submit to Drug Testing for Controlled Substances

S.L. 2009-574, Part XV (HB 945, Part XV) authorizes the Division of Health Service Regulation and the Division of Aging and Adult Services, in the Department of Health and Human Services (Department), to study the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees. The Department may report its findings and recommendations to the North Carolina Study Commission on Aging on or before October 1, 2010.

This part became effective September 10, 2009. (SB)

North Carolina Institute of Medicine to Study Mental Health, Developmental Disabilities, and Substance Abuse Services that are Funded with Medicaid Funds and with State Funds

S.L. 2009-574, Part XVI (HB 945, Part XVI). See **Military, Veterans', and Indian Affairs**.

North Carolina Institute of Medicine to Continue to Study Issues Related to Cost, Quality, and Access to Appropriate and Affordable Health Care for All North Carolinians

S.L. 2009-574, Part XVIII (HB 945, Part XVIII) extends the authorization for the North Carolina Institute of Medicine (NCIOM) to continue to study issues related to access to appropriate and affordable health care, as directed by Part 31 of Session Law 2008-181 (The Studies Act of 2008). The NCIOM may, as part of its study, monitor federal health-related legislation to determine how the legislation impacts costs, quality, and access to health care.

The NCIOM may make an interim report to the Joint Legislative Health Care Oversight Committee by January 15, 2010, and may submit a final report with findings, recommendations, and suggested legislation to the 2011 General Assembly upon its convening.

This part became effective September 10, 2009. (SB)

North Carolina Institute of Medicine to Study the Provision of State Mental Health, Developmental Disabilities, and Substance Abuse Services to Current and Former Members of the Armed Forces and their Families

S.L. 2009-574, Part XIX (HB 945, Part XIX). See **Military, Veterans', & Indian Affairs**.

University of North Carolina Institute on Aging to Study Public Guardianship Services

S.L. 2009-574, Part XX (HB 945, Part XX) authorizes the University of North Carolina Institute on Aging (Institute on Aging) to review public guardianship services and consult with the agencies and organizations interested in public guardianship services including the following:

- Division of Aging and Adult Services.
- Arc of North Carolina.
- Corporation for Guardianship Services.
- North Carolina Guardianship Association.
- North Carolina Association of County Directors of Social Services.
- Carolina Legal Assistance.
- Elder Law Section of the North Carolina Bar Association.

In conducting the study, the Institute on Aging may consider:

- Recommendations from Wingspread National Guardianship Conference.
- National Study of Public Guardianship by the American Bar Association's Commission on Legal Problems of the Elderly.
- Public guardianship programs in Florida, Georgia, Illinois, Indiana, Kentucky, and Virginia.

The study also may address various issues pertaining to public guardianship services, such as funding concerns and potential sources of revenue, models of public guardianship, training of public guardians, conflicts of interest in the provision of public guardianship services, and the certification of public guardianship programs. On or before October 1, 2011, the Institute of Aging may report its findings and recommendations to the North Carolina Study Commission on Aging, the Department of Health and Human Services, the Division of Aging and Adult Services, and the Fiscal Research Division.

This part became effective September 10, 2009. (SB)

Chapter 14
Insurance

Kory Goldsmith (KG), Tim Hovis (TH), Brad Krehely (BK), Shawn Parker (SP),
William Patterson (WP), Ben Popkin (BP)

Enacted Legislation

Auto Insurance

Auto Insurance/Diminution in Value

S.L. 2009-440 (SB 660) provides an alternative method for determining motor vehicle property damage when coverage for the claim is not in dispute. The act provides that (1) if the claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before and immediately after the accident and (2) if the difference in the parties' estimates of the diminution in fair market value is greater than $2,000 or 25% of the fair market retail value of the vehicle prior to the accident, whichever is less, then on the written demand of the claimant or the insurer, each must select a competent and disinterested appraiser and notify the other party of the appraiser within 20 days of the written demand. The appraisers must then appraise the loss. If the appraisers fail to agree, the appraisers must select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree on an umpire within 15 days, the claimant or the insurer may request a magistrate in the county where the vehicle is registered or the accident occurred to select the umpire. The appraisers must then submit their differences to the umpire, and the umpire must file a report determining the amount of the loss. The umpire may not award damages that are higher or lower than the determinations of the appraisers. Either party has 15 days to reject the report. If the report is not rejected, it is binding upon the parties. Each appraiser is paid by the party selecting the appraiser. The expenses of appraisal and the umpire must be paid equally by the parties.

S.L. 2009-566 delayed the effective date of this act from October 1, 2009, to January 1, 2010. The act applies to motor vehicle liability insurance policies issued or renewed on or after that date. (BK)

Revise UM/UIM Liability Coverage Requirements

S.L. 2009-561 (SB 749) makes the following changes to the law governing uninsured (UM) and underinsured motorist coverage (UIM) requirements in motor vehicle liability policies:

- Retains compulsory UM coverage, but amends G.S. 20-279.21(b)(3) to allow this coverage to be purchased at greater or lesser amounts than an insured's liability coverage. The coverage may not be less than the liability limits required under State law ($30,000 per person/$60,000 per accident/$25,000 property damage).
- Retains compulsory UM/UIM combined coverage, but amends G.S. 20-279.21(b)(4) to allow, as with UM coverage, UIM coverage to be purchased at amounts lesser or greater than the amount of the insured's liability coverage. The coverage must exceed the bodily injury liability limits required under State law and must be equal to the limits of uninsured bodily injury liability coverage purchased by the insured. (Only UM coverage, and not UIM coverage, is available to an insured who purchases the minimum limits of bodily injury coverage).
- Amends G.S. 20-279.21(b)(3) and (4) to clarify that an insurer can rely upon the information provided by an insured as to the number of vehicles on a policy. If the

policy contains 5 or more vehicles, it is considered a fleet policy and UM/UIM is not required to be provided.

The act requires the insurer to notify the insured at the time a policy is issued or renewed that the coverage limits for UM and UM/UIM will be the same as the coverage for bodily injury liability limits, unless the insured elects to purchase a different level of coverage.

This act becomes effective February 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date. (TH)

Health Insurance

Special Enrollment Period/Group Health Insurance

S.L. 2009-62 (SB 957) extends the enrollment period under Article 53 (Group Health Insurance Continuation and Conversion Privileges) of Chapter 58 (Insurance) for continuation coverage under the State's group health continuation law.

The federal American Recovery and Reinvestment Act of 2009 included a 65% subsidy for Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage for up to 9 months for workers who were involuntarily terminated and did not elect continuation coverage or terminated their coverage. Federal COBRA law applies to employers with 20 or more employees. The federal Act specifically applies this subsidy to state continuation coverage (state "mini-COBRA" laws) for employers with fewer than 20 employees. Under federal law, the individual pays 35% of the premium and the health insurer then receives the remaining 65% in federal tax credits.

The act adds the following:

- Involuntarily-terminated employees who failed to elect continuation coverage when eligible under the State's continuation coverage ("mini-COBRA") or who terminated their continuation coverage may elect continuation coverage under the extended enrollment period.
- The administrator of the group policy subject to State continuation coverage must provide notice of the extension of the enrollment period to eligible individuals within 60 days of the act's effective date.
- To obtain continuation coverage, the eligible individual must enroll within 60 days after the group policy administrator provides notice of the extension of the enrollment period.

The act extends only the period for enrollment. It does not extend the period of continuation coverage.

This act became effective June 8, 2009. (TH)

Cancer Drug Coverage Changes

S.L. 2009-170 (HB 896) specifies the following as the accepted reference compendia relating to the coverage of cancer treatment drugs:

- The National Comprehensive Cancer Network Drugs and Biological Compendium.
- The Thomson Micromedex DrugDex.
- The Elsevier Gold Standard's Clinical Pharmacology.
- Any other authoritative compendia recognized periodically by the United States Secretary of Health and Human Services.

The compendia identify unlabeled but medically-accepted uses of drugs and biologicals in anticancer chemotherapy regimens.

This act became effective June 26, 2009. (SP)

Modernize Health Maintenance Organization Oversight Requirements

S.L. 2009-173 (HB 1164) eliminates the requirement that every Health Maintenance Organization collect and report data according to Healthcare Effectiveness Data and Information Set guidelines for group contracts with 1,000 or more members. This information is obtained through other collection methods.

This act became effective June 26, 2009. (KG)

North Carolina Risk Pool Premiums/Notice Requirements

S.L. 2009-286 (HB 1294) allows the Board of Directors of the High Risk Insurance Pool to provide premium subsidies to individuals with income levels up to 300% of the federal poverty guidelines, if federal funds are available and the Board deems it fiscally prudent to do so. The act requires insurers to notify applicants for health insurance coverage of the existence of the High Risk Insurance Pool if the applicants are eligible by law for pool coverage. The act also lengthens the time period during which applicants are eligible for the shorter preexisting condition waiting period of 6 months (was to end June 1, 2009, now period runs until December 31, 2009).

The requirement that insurers notify applicants of the existence of the High Risk Insurance Pool applies to applications for health insurance coverage made on or after October 1, 2009. The remainder of the act became effective July 10, 2009. (BP)

Health Insurance Coverage/Lymphedema

S.L. 2009-313 (HB 535) requires all health benefit plans to provide coverage for the diagnosis, evaluation, and treatment of lymphedema and to apply the same cost-sharing measures (deductibles, coinsurance, etc.) to lymphedema as are applied to similar covered services. The act requires that coverage include benefits for equipment, supplies, complex decongestive therapy, gradient compression garments, and self-management training and education, if the treatment is determined to be medically necessary. The act also provides that the same deductibles, coinsurance, and other limitations must apply to the required coverage for lymphedema as apply to similar services covered under the health benefit plan.

This act became effective January 1, 2010, and applies to all health benefit plans delivered, issued for delivery, or renewed on and after that date. (SP)

Health Plan Provider Contracts/Transparency

S.L. 2009-352 (SB 877) amends Article 50 (General Accident and Health Insurance Regulations) of Chapter 58 (Insurance) to add a new Part 7 regulating contracts between health care providers and health benefit plans or insurers. The act requires that all contracts contain notice provisions including the name or title and address of the person to whom all correspondence is to be provided for each party to the contract, and provides the date of receipt for notices is calculated as 5 business days following the date the notice is properly placed in the mail. The act provides the following procedures for sending, receiving, and accepting proposed contract amendments (defined as any change to the contract terms that modifies fee schedules, other than a change required by federal, state law, rule, regulation, administrative hearing, or court order):

- Proposed contract amendments must be dated, properly labeled, signed by the health benefit plan or insurer, and contain an effective date for the proposed amendment.

- The health care provider has at least 60 days from receipt to object to the proposed amendment.
- If the provider objects, the amendment does not go into effect and the health benefit plan or insurer is entitled to terminate the contract upon 60 days' written notice.

This act became effective January 1, 2010, and applies to health benefit plan contracts between health care providers and health benefit plans or insurers delivered, amended, or renewed on or after that date. (SP)

Health and Other Insurance Law Changes

S.L. 2009-382 (HB 1183) makes the following substantive changes to State insurance law provisions:

- Amends the definition of "creditable coverage" in G.S. 58-51-17 "Portability for accident and health insurance," to ensure that State law provides for portability of coverage between group and individual markets.
- Amends Article 68 (Health Insurance Portability and Accountability) of Chapter 58 (Insurance) to insert definitions relating to group coverage and to clarify that both individual and group health insurance coverage are considered to be health insurance coverage.
- Amends Articles 65 (Hospital, Medical and Dental Service Corporations) and 67 (Health Maintenance Organization Act) of Chapter 58 (Insurance) to clarify applicability of the preexisting condition calculation provision in G.S. 58-51-15(a)(2)b and the portability provision in G.S. 58-51-17 to Hospital, Medical, and Dental Service Corporations and to Health Maintenance Organizations.
- Amends the accident and health policy provision (G.S. 58-51-15) and portability provision (G.S. 58-51-17) to apply these provisions to all accident and health insurance policies issued or delivered in the State and to certificates issued under policies issued and delivered to trusts or associations outside the State that cover persons residing in the State.
- Requires insurers who engage third party administrators of benefit plans with more than 100 certificate holders to file with the Commissioner certificates of completion of required audits of their third party administrators, in the manner specified by the Commissioner, on an annual basis; requires insurers to maintain records of the audits for five years or, if a domestic insurer, until completion of its next quinquennial (five-year period) examination; and authorizes the Commissioner to adopt rules to implement these requirements.
- Allows for applications for annuities to be delivered electronically unless paper copies are requested, and for receipts to be provided for executed applications.
- Authorizes the Commissioner to adopt rules to protect consumers from misleading and fraudulent practices regarding senior-specific certifications and professional designations for life insurance or annuity products, substantially similar to the National Association of Insurance Commissioners (NAIC) Model Regulation on the Use of Senior Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended.
- Clarifies that the time period within which overpayments and underpayments of claims must be resolved is two years from the date of the original claim payment or adjudication.
- Allows for the continuation of health benefit plan coverage of dependent students on medically necessary leaves of absence from postsecondary educational institutions (Michelle's Law).
- Requires that health benefit plans and insurers comply with the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-343).

- Requires that group health benefit plans of large employees (at least 51 employees) covering medical and surgical benefits and mental health benefits must comply with the Mental Health Parity and Addiction Equity Act of 2008 (Subtitle B of Title V of P. L. 110-343).
- Allows for enrollment of eligible employees and their dependents into Medicaid or the State Children's Health Insurance Program if they request enrollment within 60 days of termination of coverage or determination of eligibility.
- Makes external review of health benefit plan provisions applicable to the North Carolina Health Insurance Risk Pool.
- Amends provisions of Part 4 (Health Benefit Plan External Review) of Article 50 (General Accident and Health Insurance Regulations) of Chapter 58 (Insurance) to incorporate provisions of the NAIC Model Act (#76), modifying filing provisions and extending filing timelines relating to the grievance process.
- Conforms statutes to reflect discontinuation of use of automobile inspection stickers (became effective July 31, 2009).
- Repeals the sunset of Article 91 (Interstate Insurance Product Regulation Compact) of Chapter 58 (Insurance), which was to be October 1, 2009 (became effective July 31, 2009).
- Updates the suitability law (G.S. 58-60-170) to comply with a recent Securities and Exchange Commission rule.

This act became effective October 1, 2009. (BP)

GED High School Diploma / No Drug Convict / Bail Bondsman

S.L. 2009-536 (SB 458) makes the following changes to the laws related to licensure for bail bondsmen or runners:

- Requires all applicants for license as a bail bondsman or a runner to have a high school diploma or its equivalent.
- Updates the existing criminal history record check provision for new applicants to meet standards required by the Department of Justice and the Federal Bureau of Investigations.
- Requires in even-numbered years that renewal applicants submit an application for renewal and undergo a criminal background check within 30 days of the expiration of the current license. This does not change the requirement that a renewal fee be paid every year.
- Requires the Commissioner of Insurance (Commissioner) to revoke or refuse to renew a license of a licensee who has been convicted of a misdemeanor drug offense on or after October 1, 2009.
- Requires the Commissioner to deny a license if an applicant has been convicted of a of a misdemeanor drug offense under Article 5 (Controlled Substances Act) of Chapter 90 (Medicine and Allied Occupations) within the previous 24 months of the date of the application for the license.

This act became effective August 28, 2009. (KG)

Clarifying Changes to State Law-High Risk Pool Allocation

S.L. 2009-550, Sec. 9 (HB 274, Sec. 9) provides that funds transferred from the Health and Wellness Trust Fund to the State Controller to support certain appropriations made for operations and claims of the North Carolina High Risk Pool shall be allocated directly to the North Carolina High Risk Pool.

This section became effective August 28, 2009. (SP)

Professional Employer Organization Amendments

S.L. 2009-552 (SB 1029) makes changes to the law governing professional employer organizations (PEOs).

The act clarifies that PEOs licensed prior to October 1, 2008, must post a bond in the amount of $100,000. New bonding requirements enacted in 2008 would apply only to those applicants who were not already licensed when the 2008 changes took effect.

The act allows a client company of a PEO to sponsor and maintain employee benefit plans for the benefit of assigned employees.

A PEO that self-insures its health benefit plan on October 1, 2009, may continue to self-insure if it meets the following conditions:

- Uses a third-party administrator.
- Holds all health insurance plan assets in a separate trust account.
- Provides sound reserves as determined by a qualified actuary.
- Maintains the plan for employees only.
- Issues a policy or summary plan, with conspicuous notice, to all employees.
- Files all third-party administrator contracts with the Commissioner.
- Maintains actuarially sound aggregate and individual stop-loss insurance.
- Files summary plan with the Commissioner.
- Maintains a written plan of operation for the plan filed with the Commissioner.

The act authorizes the Commissioner to conduct an examination of a licensee's self-funded plan, with the reasonable cost of retained professionals or specialists to be borne by the licensee, up to a maximum of $60,000 unless the Commissioner and licensee agree to a higher amount.

The act amends the law governing tax credits and other economic incentives provided by the State and based on employment. Incentives provided by a political subdivision of the State are to be treated in the same manner as incentives provided by the State.

The Department of Insurance is directed to report to the 2010 General Assembly on the implementation, administration, and enforcement of this act. The Department also may recommend statutory changes.

This act became effective August 28, 2009. (TH)

Health Insurance Pool Pilot Program

S.L. 2009-568 (HB 212) authorizes the creation and operation of a health insurance demonstration project for large and small employers in the State and directs project participants and the Department of Insurance to conduct post-project analyses of the impact of the project on the cost and availability of health insurance in the project areas and the State as a whole. The demonstration project must comply with applicable State insurance law requirements, must be approved by the Department of Insurance before its pool is established, must begin offering coverage no later than December 1, 2010, and may operate no later than December 31, 2014.

This act became effective August 28, 2009, and expires December 31, 2014. (BP)

Insurance Guaranty Association

Authorize Insurance Guaranty Association to Act as Servicing Facility

S.L. 2009-130 (HB 964) amends the statutory authority of the North Carolina Insurance Guaranty Association, authorizing the Association to be designated or to contract as a servicing

facility for any entity when recommended by the Association's board of directors and approved by the Commissioner of Insurance.

This act became effective June 19, 2009. (WP)

Structured Settlement Annuities / Insurance Guaranty Association

S.L. 2009-448 (SB 780) extends protection against defaults by issuers of annuities used to fund structured settlements of personal injury claims, by covering such defaults regardless of whether the owner of the annuity contract is a resident of this State, if the payee is a resident of North Carolina at the time the issuer of the annuity is determined to be unable to meet its contractual obligations.

If the payee is not a resident of this State, the act provides coverage if both of the following conditions are met:

- The contract owner is a resident of this State or, if not, the contract owner's state of residence has an association similar to this State's association and the annuity issuer is domiciled in North Carolina.
- No coverage is offered by the insurance guaranty association of the state(s) in which the payee or the contract owner reside.

The act limits the Association's liability with respect to any one contract holder of a structured settlement annuity to $1 million. For claims other than those involving structured settlement annuities, the act increases the Association's maximum liability with respect to any one individual from $300,000 to $500,000.

This act became effective August 7, 2009, and applies to claims submitted to the Insurance Guaranty Association on or after that date. (WP)

Property Insurance

Update Standard Fire Insurance Policy

S.L. 2009-171 (HB 1165) creates G.S. 58-44-15 (Fire insurance policies; standard fire insurance policy provisions) which codifies the provisions of the standard fire insurance policy. These provisions had been contained previously in the statutes as a photographic image of the policy.

This act became effective January 1, 2010, and applies to fire insurance policies issued or renewed on or after that date. (KG)

Beach Plan Changes

S.L. 2009-472 (HB 1305) makes various changes to Article 45 (Essential Property Insurance for Beach Area Property) of Chapter 58 (Insurance) governing the North Carolina Insurance Underwriting Association (NCIUA), also known as the "Beach Plan." The Plan is a private entity comprised of all property and casualty insurers in the State and was created to ensure the availability of property insurance to people who are unable to buy insurance through the standard or voluntary market. By statute, the Plan covers two areas: (1) the barrier islands, referred to under the Plan as the Beach area; and (2) 18 coastal counties, referred to as the Coastal area.

The Association or Plan also files with the Commissioner for his or her approval policy deductible plans to be paid by property owners, and the percentage differential or surcharge for coverage offered by the Plan. The surcharge is a percentage amount above the voluntary market rate approved by the Commissioner which all beach and coastal property owners must pay to

purchase homeowners coverage through the Plan. The surcharge applies only to homeowner's coverage and homeowner's wind and hail coverage.

The act makes the following changes to the Beach Plan:

- Renames the Beach Plan the "Coastal Property Insurance Pool."
- Requires that the surplus of the Association be retained to pay losses, purchase reinsurance, and pay operating expenses and provides that the surplus may not be distributed to member companies.
- Sets maximum coverage limits and decreases those limits to $750,000 for homeowners and dwelling policies (currently $1.5 million) and limits contents coverage to 40% of building value (currently 70%).
- Sets homeowners coverage surcharges at current rates of 5% above approved voluntary market rates for separate wind and hail coverage and 15% for wind and hail as a part of a homeowner's policy.
- Requires the Beach Plan to set a minimum named storm deductible for wind and hail coverage of 1% of the insured value of the property.
- Requires the Association to file a schedule of credits for policyholders based on mitigation and construction features. Requires the Rate Bureau to do the same for non-Beach Plan policyholders in the beach and coastal areas of the State.
- Requires the Association to submit to the Commissioner an installment plan for premium payments.
- Provides that when losses incurred by the Association result in an assessment against insurers of $1 billion, the Association may, subject to verification of the amount of losses and expenses by the Commissioner, institute a catastrophe recovery charge on residential and commercial policyholders statewide to finance the remaining losses. The charge, as prescribed by the Commissioner, must not exceed an aggregate amount of 10% of the annual policy premium on any one policy of insurance.
- Requires insurers to report by February 1 of each year the amount of homeowner's insurance written in the Beach and Coastal areas.
- Provides that information concerning the Association's activities must be made fully available upon request.
- Requires the North Carolina Rate Bureau to revise, monitor, and review territories in the Beach and Coastal areas.
- Requires the Beach Plan to be audited annually by an auditor selected by the Commissioner.
- Requires public notice of filings for increases in residential property insurance rates, in at least two newspapers with statewide distribution.
- Authorizes the Legislative Research Commission (LRC) to study changes in the composition of the Board of Directors of the Association, public participation in the rate-making process, time limits for approval or disapproval by the Commissioner of rate filings, and the establishment of a public advocacy staff in rate-making proceedings.

The provision establishing a minimum named storm deductible for wind and hail coverage of 1% of the insured value of the property becomes effective when a rate or rates with this deductible becomes effective, as approved by the Commissioner. The remainder of the act became effective August 26, 2009, and applies to policies filed, issued, or renewed on or after that date. (TH)

Regulate Public Adjusters

S.L. 2009-565 (HB 1313) enacts a new Article 33A (Public Adjusters) in Chapter 58 (Insurance). Many of the provisions were previously contained in administrative rules.

The act defines a "public adjuster" as one who acts on behalf of the insured to settle claims for loss or damage of real or personal property covered by an insurance contract; or advertises for or solicits business as a public adjuster; or advises insureds about property loss or damage claims under insurance policies. In addition, Article 33A:

- Establishes qualifications for licensure including a criminal background check and a written examination.
- Provides for nonresident licensure reciprocity.
- Establishes continuing education requirements.
- Requires a bond or letter of credit for each licensed public adjuster.
- Sets requirements for contracts between a public adjuster and an insured.
- Establishes record retention requirements.
- Sets standards of conduct for public adjusters.
- Authorizes the Commissioner of Insurance to adopt rules to carry out the new Article.

This act becomes effective July 1, 2010. (KG)

State Health Plan

State Health Plan/Good Health Initiatives

S.L. 2009-16 (SB 287) funds the State Health Plan for the 2008-09 and 2009-10 fiscal years and makes various changes to the Plan's benefits, including:

- Elimination of the PPO Plus option.
- Institution of smoking cessation and weight management wellness initiatives:
  - Beginning July 1, 2010, to be eligible to join the Standard Plan, members not primarily covered by Medicare must attest that they do not use tobacco products, or must furnish a signed statement by their doctor that they are participating in a smoking cessation program. Otherwise, members will be permitted to enroll in the Basic Plan only.
  - Beginning July 1, 2011, to be eligible to enroll in the Standard Plan, members not primarily covered by Medicare must attest that their weight and height ratio is within a range determined by the Plan based on evidence-based healthy weight clinical guidelines, or their physician must certify in writing that the member has a medical condition that prevents the attainment of the specified weight range or that the member is actively participating in a Plan-approved weight management program. Otherwise, members will be permitted to enroll in the Basic Plan only.
- Prescription drug changes:
  - Generic copay remains at $10.
  - Preferred brand without generic = $35 (up from $30).
  - Nonpreferred brand = $55 (up from $40).
  - Brand with generic equivalent = $10 plus the difference between the Plan's gross allowed cost for the generic and the Plan's cost for the brand.
  - If a pharmacy offers to the general public a drug covered by the Plan at a price that is less than the co-payment under the Plan, the pharmacy must charge the lesser of the general public's cost and the Plan's co-payment.
- Specialty medication changes:
  - Specialty medications must be purchased from a specialty vendor under contract with the Plan.
  - Co-payment for specialty drug will be 25% of the Plan's cost, not to exceed $100.
  - Specialty medication requirements do not apply to cancer medications.
  - Specialty medications are those that, among other things, exceed $400 per prescription cost to the Plan.

- Routine eye exams will not be covered on and after January 1, 2010.
- Basic Plan deductibles and copayments (70/30 coverage):
  - In-network deductible = $800. Out-of-Network = $1600.
  - In-network coinsurance maximum = $3,250. Out-of-network= $6,500.
  - In-network primary care co-pay = $30 per covered individual.
  - In-network specialist co-pay = $70 per covered individual, except that mental health and substance abuse providers, chiropractors, and physical, occupational, and speech therapist co-pay = $55 per covered individual.
  - Inpatient co-pay = $250 per covered individual.
- Standard Plan (80/20 coverage):
  - In-network deductible = $600. Out-of-network = $1,200.
  - In-network coinsurance maximum = $2,750. Out-of-network = $5,500.
  - In-network urgent care = $75 per covered individual.
  - In-network primary care = $25 per covered individual.
  - In-network specialist = $60, except for mental health, substance abuse, chiropractic and physical, occupational, and speech therapy providers = $45 per covered individual.
  - Inpatient = $200 per covered individual.
- Dependent coverage premium is increased by 8.9% in 2009-2010. An additional 8.9% increase will be applied for 2010-2011.
- Pharmacies have agreed to achieve savings of $18 million in pharmacy benefit costs to the Plan in 2009-2010, and $20 million in 2010-2011.

Except for appropriations and benefit changes that became effective July 1, 2009, the remainder of the act became effective on April 23, 2009. (WP)

State Health Plan/Taxpayer Recovery Act

S.L. 2009-83 (HB 439) requires the State Health Plan to pay benefits directly to the provider, or to make the payment co-payable to the provider, for services provided by an ambulance service owned or franchised by a county or supplemented with county funds, or owned and operated by a municipality or supplemented by municipal funds.

This act became effective July 1, 2009, and applies to county or city ambulance services provided on and after that date. (WP)

State Health Plan Blue Ribbon Task Force/Changes to State Health Plan

S.L. 2009-571 (HB 1274) changes the procedure for appointing members to the State Health Plan Blue Ribbon Task Force and makes various other changes to the State Health Plan, including:

- Exempting the new weight management and smoking cessation requirements from an automatic five-year cessation of coverage for knowingly making false claims-related representations.
- Requiring the Executive Administrator and Board of Trustees to obtain the approval of the General Assembly before making any premium rate changes.
- Modifying the maximum pharmacy copayment a member may be charged.

The pharmacy copayment changes in this act became effective on October 1, 2009. The remainder of this act became effective on August 28, 2009, and applies to Plan years beginning July 1, 2009. (WP)

Miscellaneous

Revise Insurance Financial Conditions

S.L. 2009-172 (HB 1161) changes the laws applicable to the financial conditions of insurance companies. The act does all of the following:

- Requires intermediaries (defined as persons acting as brokers in soliciting or accepting reinsurance contracts on behalf of insurers) to comply with orders issued by courts or arbitration panels. This change subjects offenders to sanctions by the Commissioner of Insurance in addition to whatever sanctions may be imposed by the issuing court or arbitration panel.
- Authorizes the rehabilitator of the business of an insurance company to include "runoff" (a trade term referring to payment by the insurer of losses that may occur under policies that remain in force) as one of the components of a plan of rehabilitation.
- Permits the liquidator to serve a show cause order by publication or first class mail.
- Prohibits a third party administrator, service company, or any person related to or affiliated with them from making any contribution to the surplus of the self-insurer. A surplus is a minimum level of funds over and above the liabilities and capital of the company.
- Allows employers who are self-insured to use alternative methods when submitting financial statements and permits the required reports to be prepared by foreign public accounting firms registered with the Public Company Accounting Oversight Board established by the Sarbanes-Oxley Act of 2002.
- Eliminates the requirement that a foreign insurance company show it has been successful in the conduct of the business.

This act became effective October 1, 2009. (BK)

Mortgage Guaranty Insurance Revisions

S.L. 2009-254 (SB 981) authorizes the Commissioner of Insurance (Commissioner) to waive the minimum policyholders position financial requirements for mortgage guaranty insurers if the Commissioner finds that the insurer's policyholders position is reasonable in relationship to the insurer's risk and is adequate to meet the insurer's financial needs. An insurer must request a waiver in writing at least 90 days in advance of the date the insurer expects to exceed the required minimum policyholders position. In determining whether the insurer's policyholders position is reasonable and adequate, the Commissioner must consider the following factors (among others):

- The size of the mortgage guaranty insurer as measured by assets, capital, surplus reserves, premiums, and other criteria.
- The extent to which its business is diversified across time, geography, and credit quality.
- The nature and extent of its reinsurance.
- The quality, diversification, and liquidity of its assets and investments.
- The historical and forecasted trend in its policyholders position.
- The policyholders position of comparable companies.
- The adequacy of its reserves.
- The quality and liquidity of investments in affiliates.
- An independent actuary's opinion of its policyholders position.
- Actual and potential capital contributions.
- Historical and forecasted trends in its aggregate risk.

The Commissioner may retain experts to assist in the review of the request, with the costs to be borne by the mortgage guaranty insurer. The waiver must be:

- For a specified period of time, not to exceed two years, and not extending beyond the act's sunset date of July 1, 2011.
- Subject to any terms and conditions that the Commissioner deems best suited to restoring the insurer's minimum policyholders position.

This act became effective July 1, 2009, and expires July 1, 2011. (BK)

Insurance Licensing Changes

S.L. 2009-383 (HB 1159) makes a number of changes related to insurance licensing. The act clarifies that business entity licenses expire on March 31st (instead of April 1st) of each year unless renewed, and allows electronic filing of licensing documents either with the Commissioner of Insurance (Commissioner) or the Commissioner's designee. The designee may include the National Insurance Producer Registry of the National Association of Insurance Commissioners. The act provides that when an insurer appoints a licensed individual to be its agent, the individual is authorized to act as an agent for each type of insurance for which the individual holds a license and which the insurer is authorized to sell. There is one appointment for each type of insurance for which the appointed agent is licensed.

This act became effective October 1, 2009. (KG)

Annual Financial Reporting

S.L. 2009-384 (HB 1314) does the following:

- Requires an annual audit of insurers' financial statements by independent certified public accountants, with communication of internal control related matters noted in the audit, and management's report of internal control over financial reporting.
- Exempts insurers having direct premiums written in the State of less than $1 million in a calendar year and fewer than 1,000 policyholders or certificate holders nationwide at the end of the calendar year from the annual financial reporting requirements unless the Commissioner of Insurance (Commissioner) finds that compliance is necessary.
- Exempts foreign or alien insurers filing the financial report in another state from audited financial reporting requirements if certain conditions are met.
- Requires that reports be prepared by an independent certified public accountant (CPA) and filed on or before June 1 for the year ending December 31 immediately preceding, and allows the Commissioner to grant extensions for 30 days if good cause is shown.
- Requires that the financial report show the financial position of the insurer as of the end of the most recent calendar year.
- Provides that the Commissioner generally must recognize a CPA if the CPA conforms to the specified ethical and professional standards of the accounting profession.
- Permits mediation or arbitration agreements to settle disputes relating to the audit.
- Provides that the lead or coordinating audit partner having primary responsibility for the audit may not act as lead partner for more than five consecutive years unless otherwise approved by the Commissioner.
- Prohibits the Commissioner from accepting audit reports prepared by a natural person who has been convicted of fraud, bribery, violation of insurance laws with respect to previous reports, or has demonstrated a pattern of failing to disclose material information.

- Requires the CPA to provide independence of services. To be independent, the CPA may not function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.
- Allows an insurer to seek approval from the Commissioner to file a consolidated or combined financial statement if the insurer is part of a group of insurers that uses a pooling or 100% reinsurance agreement affecting solvency.
- Requires that audits be conducted in accordance with generally accepted standards.
- Requires the CPA to report to the board of directors or the auditing committee any determination that the insurer has materially misstated its financial condition or the insurer does not meet the minimum capital and surplus requirements.
- Mandates that the CPA furnish a letter of his or her qualifications.
- Defines "work papers" and requires the CPA to make available for review by the Commissioner all work papers prepared in the conduct of the audit.
- Sets forth requirements for audit committees. The audit committee is responsible for the appointment, compensation, and oversight of the work of any CPA. To be considered independent, members of the audit committee may not accept any fee or compensation other than in their capacity as members of the audit committee or board of directors, unless participation is otherwise required by North Carolina law.
- Provides guidelines regarding the conduct of the insurer in connection with the preparation of required reports and documents, including a prohibition against materially false or misleading statements by directors or officers to the CPA, or other actions that would render the CPA's financial statements materially misleading.
- Requires every insurer who must file an audited financial report to file the internal control report also, with certain exceptions.
- Allows the Commissioner to grant an exemption from any and all of these requirements if compliance would constitute a financial or organizational hardship upon the insurer.

This act became effective July 31, 2009. (BK)

Pyrotechnics Safety Permitting Act

S.L. 2009-507, Sec. 3 (SB 563, Sec. 3) directs the State Fire Marshall, in consultation with the State Fire and Rescue Commission, to set guidelines, testing, and training requirements for individuals seeking a display operator permit and for individuals who assist display operators with the exhibition, use, handling, or discharge of pyrotechnics. The act prohibits the use, handling, exhibition, or discharge of pyrotechnics for concerts or public exhibition by anyone who either has not completed the requisite training or is not an active member in good standing with a local fire or rescue department with experience with pyrotechnics or explosives, as verified by the State Fire Marshall, and who possesses the appropriate requisite professional qualifications. The act requires that anyone who exhibits, uses, handles, or discharges pyrotechnics at a concert or public exhibition must have a display operator permit. Persons applying for a display operator permit must meet the following criteria:

- Be at least 21 years old.
- Have assisted with authorized displays at least three times.
- Have completed the minimum training required.
- Have passed an approved examination or have current certification by a third party acceptable to the State Fire Marshall.
- Pay the cost of the examination and an application fee of not more than $100.

Permits are valid for three years, and persons holding a permit in another state whose requirements meet or exceed those of North Carolina may be issued a permit by the State Fire Marshall, based on their out-of-state permit.

This section becomes effective February 1, 2010, and applies to offenses committed on or after that date. (BP)

Insurance Law Changes

S.L. 2009-566 (HB 1166) makes the following changes to statutes applying to licensing property, casualty, or personal lines insurance agents, bail bondsmen, surplus lines carriers, collection agencies, and insurance premium finance companies, and authorizes the release of life insurance coverage and benefits information to certain persons providing funeral services:

- Provides that the Financial Industry Regulatory Authority or any successor entity may be referred to as "FINRA" in Article 33 (Licensing of Agents, Brokers, Limited Representatives, and Adjusters) of Chapter 58 (Insurance), and substitutes "FINRA" for "National Association of Securities Dealers" in that Article.
- Clarifies the existing law prohibiting persons from holding a license as an adjuster and for property, casualty, or personal lines insurance.
- Requires individuals applying for a license as an agent, broker, limited representative, adjuster or motor vehicle damage appraiser to submit to a criminal background check as part of the licensure process (becomes effective October 1, 2010, and applies to applications made on or after that date).
- Repeals G.S. 58-33-35, which exempts certain applicants for an agent's license from taking an examination.
- Clarifies the process by which an insurer may appoint an individual as an agent, and requires the insurer to notify the Commissioner within 15 days of that appointment.
- Allows the Commissioner to suspend, revoke, refuse to renew, or put on probation, an insurance license if the individual has been convicted of a felony involving moral turpitude.
- Requires nonresident surplus lines licensees to be licensed under the procedures applicable to agents, brokers, limited representatives, adjuster, and motor vehicle damage appraisers.
- Requires an applicant for a bail bondsman or runner license who is not able to complete the examination requirement within 30 days after notification of the Commissioner to submit to another criminal background check, and removes a provision that required a bail bondsman who discontinues writing bail bonds to notify the clerk of court of that discontinuance.
- Effective October 1, 2009, requires owners of collection agencies, motor clubs, and insurance premium finance companies to notify the Commissioner of any criminal conviction involving dishonesty or breach of trust and of any administrative action by another state or another governmental agency.
- Effective January 1, 2010, requires applicants for a license under Chapter 58 to provide the Commissioner with an e-mail address as well as a residential address, and to notify the Commissioner of any change in the e-mail address.
- Allows applicants who are subsidiaries of a parent holding company, and who apply for a permit to conduct a collection agency business to file the parent company's balance sheet accompanied by a guarantee by the parent company of the subsidiary's performance, instead of the existing requirement that the subsidiary file its own balance sheet; and provides that the parent company remains responsible for the guarantee of performance provided under the above provision, unless a new parent company acquires the subsidiary and files a new guarantee of the subsidiary's performance, or the subsidiary files its own balance sheet.
- Inserts a definition section into Article 70 (Collection Agencies), defining the following terms:
  - Affiliate.
  - Control.
  - Holding company system.
  - Person.

- Subsidiary of a specified person.
- Voting security.

➢ Allows persons licensed to practice funeral directing and employees of licensed funeral homes to request information from an insurer regarding coverage of a deceased person under a life insurance contract and requires that the requestor provide the insurer with a copy of the notification of death and a written authorization from the deceased person's next of kin or person financially responsible for the funeral services. Before recipients of this information may discuss with the beneficiaries financial arrangements for burial of the deceased, they must inform all beneficiaries, in bold print, that they have no obligation to spend any of the life insurance money on the funeral or other debts or obligations of the deceased; anyone making a false request for information under the new section or failing to comply with the statutory requirements is deemed to be guilty of fraud or misrepresentation in the practice of funeral service and unfit to practice funeral service, which would authorize the Board of Funeral Service to suspend, revoke or refuse to renew a license, or to accept from the licensee payment of a penalty not to exceed $5,000 (becomes effective October 1, 2010).

➢ Amends the procedural requirements for appeals of the Commissioner's final decisions to the North Carolina Court of Appeals to delete the requirement that exceptions to the final order be set forth in the notice of appeal filed with the Commissioner and preventing the appellant from relying on any grounds for relief on appeal not set forth specifically in the notice of appeal, as the Court of Appeals no longer requires assignments of error (became effective October 1, 2009, and applies to appeals filed on or after that date).

Except as noted, this act became effective August 28, 2009. (BP)

Studies

New / Independent Studies / Commissions

Legislative Research Commission

Beach Plan Board and Public Participation in Rate-Making

S.L. 2009-472, Sec. 8 (HB 1305, Sec. 8) authorizes the Legislative Research Commission to study the need for changes in the composition of the Board of Directors of the North Carolina Insurance Underwriting Association (NCIUA) and the method of selection of Board members. The Commission also may study the adequacy of public participation in the filing of rates for property insurance by the North Carolina Rate Bureau, the NCIUA, and the North Carolina Joint Underwriting Association and the approval of those rates by the Commissioner, including the time limits for approval or disapproval by the Commissioner of rate filings. In its study, the Commission may examine the feasibility of establishing a permanent public advocacy staff to participate and advocate in rate-making proceedings under Articles 36 (North Carolina Rate Bureau), 45 (Essential Property Insurance for Beach Area Property), and 46 (Fair Access to Insurance Requirements) of Chapter 58 (Insurance).

The Commission may make an interim report to the 2009 General Assembly, 2010 Regular Session and, if appointed, must submit a final report to the 2011 General Assembly.

This section became effective August 26, 2009. (TH)

Health Insurance Coverage for the Diagnosis and Treatment of Autism Spectrum Disorders

S.L. 2009-574, Sec. 2.26 (HB 945, Sec. 2.26) authorizes the Legislative Research Commission to study and assess the need for and the merits of providing health insurance coverage for the diagnosis and treatment of autism spectrum disorders.

This section became effective September 10, 2009. (WP)

Medicaid Income Levels/Community Alternative Programs

S.L. 2009-574, Sec. 2.28 (HB 945, Sec. 2.28) authorizes the Legislative Research Commission to study the income requirements for eligibility to receive Medicaid and Community Alternative Program benefits.

This section became effective September 10, 2009. (WP)

Feasibility and Advisability of Establishing "Cover NC" and Establishing the North Carolina Health Insurance Market Choices Program

S.L. 2009-574, Sec. 2.30 (HB 945, Sec. 2.30) authorizes the Legislative Research Commission to study the feasibility and advisability of establishing a program to provide health care access to uninsured individuals and their families, which may emphasize coverage for basic and preventive health care services, provide inpatient hospital, urgent, and emergency care services, and be offered Statewide.

This section became effective September 10, 2009. (WP)

Chiropractic Services and Cost-Sharing under the State Health Plan

S.L. 2009-574, Sec. 2.34 (HB 945, Sec. 2.34) authorizes the Legislative Research Commission to study chiropractic services and cost-sharing under the State Health Plan for Teachers and State Employees.

This section became effective September 10, 2009. (WP)

Reform Homeowners Insurance Rate Filing Process

S.L. 2009-574, Secs. 2.49 and 2.64 (HB 945, Secs. 2.49 and 2.64) authorize the Legislative Research Commission to study the adequacy of public participation in the setting of rates for homeowners insurance in North Carolina.

This section became effective September 10, 2009. (WP)

Issues Relating to the Duration of Temporary Total Disability Compensation under the Workers' Compensation Act

S.L. 2009-574, Sec. 2.60 (HB 945, Sec. 2.60) authorizes the Legislative Research Commission to study issues relating to the duration of compensation for Temporary Total Disability under the Workers' Compensation Act.

This section became effective September 10, 2009. (WP)

Provider Credentials/Insurer/Provider Contracts

S.L. 2009-574, Sec. 3.3 (HB 945, Sec. 3.3) authorizes the Legislative Research Commission to study issues related to the credentialing of health care providers under health benefit plans, notice and contract negotiation provisions for health benefit plans and provider contracting, certificate of need exemption criteria, modification of inspection practices of hospital outpatient locations, and related issues.

This section became effective September 10, 2009. (WP)

Referrals to Existing Commissions/Committees

North Carolina Institute of Medicine to Continue to Study Issues Related to Cost, Quality and Access to Appropriate and Affordable Health Care for All North Carolinians

S.L. 2009-574, Sec. 18.1 (HB 945, Sec. 18.1) authorizes the North Carolina Institute of Medicine to continue the work of its Health Access Study Group to study issues related to cost, quality, and access to appropriate and affordable health care for all North Carolinians, to make an interim report to the Joint Legislative Health Care Oversight Committee no later than January 15, 2010, which may include recommendations and proposed legislation, and to issue its final report with findings, recommendations, and suggested legislation to the 2011 General Assembly upon its convening.

This section became effective September 10, 2009. (WP)

Referrals to Departments, Agencies, Etc.

Department of Health and Human Services to Study Provider Medical Rates to Determine the Equity of Existing Rates among Providers

S.L. 2009-574, Secs. 14.1 and 14.2 (HB 945, Secs. 14.1 and 14.2) authorize the Department of Health and Human Services, Division of Medical Assistance, to conduct a study of rate equity for medical providers, and to report its findings and recommendations no later than December 1, 2009, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective September 10, 2009. (WP)

Department of Insurance to Study Property and Casualty Insurance Guaranty Association Model Act and Changes to the Insurance Guaranty Association Operational Plan to Streamline and Simplify the Reimbursement Process for Claimants

S.L. 2009-574, Sec. 45.1 (HB 945, Sec. 45.1) authorizes the Department of Insurance to study the latest version of the Property and Casualty Insurance Guaranty Association Model Act and determine what provisions should be incorporated into Article 48 (Postassessment Insurance

Guaranty Association) of Chapter 58 (Insurance). The Department also is authorized to study how the Insurance Guaranty Association might revise its plan of operation to streamline and simplify the process for claimants seeking reimbursement. The Department of Insurance is authorized to report its findings, including proposed legislation, to the House of Representatives Insurance Committee and the Senate Commerce Committee no later than April 1, 2010.

This section became effective September 10, 2009. (WP)

Chapter 15
Labor and Employment

Drupti Chauhan (DC), Tim Hovis (TH), Brad Krehely (BK), Ben Popkin (BP)

Enacted Legislation

Future Volunteer Firefighters Act

S.L. 2009-21 (HB 557) clarifies that nothing in the youth employment provisions of the Wage and Hour Act prohibits "qualified youth under 18 years of age" from participating in training through their fire department, the Office of State Fire Marshal, or the North Carolina Community College System. The term "qualified youth under 18 years of age" means an uncompensated fire department or rescue squad member who is over the age of 15 and under the age of 18 and who is a member of a bona fide fire department or a rescue squad.

This act became effective May 4, 2009. (BK)

Unemployment Insurance/Severely Disabled Veterans

S.L. 2009-101 (HB 1124) amends unemployment insurance law by adding a definition for "severely disabled veteran" and providing that the discharge or employer-initiated separation of individuals fitting the definition would not be included within the "misconduct for work" or "substantial fault" discharge provisions, if the discharge or separation was, "...for acts or omissions of the veteran that the Commission [Employment Security Commission] determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

This act became effective June 15, 2009. (BP)

Enhance Youth Employment Protections

S.L. 2009-139 (HB 22) requires the Commissioner of Labor to report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on the investigative, inspection, and enforcement activities undertaken by the Department of Labor (DOL) regarding youth employment protections in North Carolina. The written report must be submitted no later than February 1 of each year and must contain data and information from the calendar year preceding the date on which the last written report was submitted.

The first report is due February 1, 2010, and must cover investigative, inspection, and enforcement activities for the period January 1, 2008, through December 31, 2008.

This act became effective June 19, 2009. (DC)

Workers' Compensation Self-Insurance Security Association

S.L. 2009-242 (SB 893) makes changes to the laws governing the North Carolina Self-Insurance Security Association. The Association is a nonprofit, unincorporated legal entity which provides for the payment of covered claims under the Workers' Compensation Act against member self-insurers in order to avoid financial loss to claimants because of a self-insurer's insolvency. The Association Aggregate Security System was established by the Association to

allow self-insurers to collectively secure their aggregate self-insured workers' compensation liabilities through the Association. The act makes the following changes:

- Authorizes the Association to annually assess group self-insurers participating in the System in an amount not to exceed 2% of gross premiums for the preceding calendar year. Prior law authorized the Association to assess only individual self-insurers.
- Clarifies that an individual self-insurer that has defaulted on the payment of its workers' compensation liability is excluded from the System.
- Excludes individual self-insurers from the System if they fail to submit sufficient financial information.
- Increases the minimum deposit amount from 25% to 50% of total undiscounted, outstanding claims when no System is in effect for individual self-insurers who have a BBB debt rating or better. This would occur when the Commissioner disapproves the System submitted by the Association.

The act became effective July 1, 2009. (TH)

Repeal Unemployment Insurance Disqualification for Trailing Spouses

S.L. 2009-301 (HB 877) amends Employment Security law to add the following specific provisions that are required to make North Carolina eligible to receive the maximum possible incentive payments available under the federal Assistance for Unemployed Workers and Struggling Families Act:

- Provides an unemployed individual is not ineligible for unemployment compensation benefits solely because the individual is seeking only part-time work, provided the majority of weeks of work in the individual's base period include part-time work.
- Provides an individual who is discharged or leaves work due to the illness or disability of the employee, a minor child, or an aged or disabled parent is not disqualified from receiving benefits, regardless of whether the employee could have done alternative work offered by the employer.
- Eliminates the two-week disqualification period for a claimant who leaves work to accompany a spouse to a new place of residence where the spouse has secured work and the location is too far for the claimant to commute. Benefits paid on the basis of this provision are not charged to the account of the employer.
- Clarifies the provision in current law that allows a claimant who leaves work as a result of domestic violence is deemed to constitute good cause for leaving, applies to the claimant, the claimant's spouse, parents, and minor children.
- Provides an individual cannot be denied benefits for refusing to accept full-time work if the individual meets the part-time worker requirements.

This act became effective January 1, 2010. (BP)

Strengthen Child Labor Violation Penalties

S.L. 2009-351 (HB 23) increases the penalties for violations of child labor laws. The act makes the following changes to the Wage and Hour Act:

- Increases the civil penalty for violations regarding youth employment to $500 for the first violation (was $250) and provides that fines for each subsequent violation cannot exceed $1,000.
- Requires employers to maintain records of the ages of employees.
    - Increases the maximum civil penalty per investigation for violations regarding records of employees to $2,000 (was $1,000).

- Clarifies that in determining the amount of the penalty, the Commissioner of Labor (Commissioner) must consider whether the violation involves an employee less than 18 years of age.

The act also makes the following changes to the Occupational Safety and Health Act of North Carolina (OSHA):

- Allows the assessment of a penalty of up to $14,000 for each serious violation that involves injury to an employee under 18 years of age.
- Requires the Commissioner, when determining the appropriateness of a penalty, to consider whether the violation involves an injury to an employee under 18 years of age.
- Modifies criminal penalties in the following ways:
  - Willfully violating an OSHA standard and causing the death of an employee 18 years of age or older is a Class 2 misdemeanor which may include a fine of up to $10,000. The fine is up to $20,000 if the employee is less than 18 years of age.
  - If the employer is convicted of more than one violation, the employer is guilty of a Class 1 misdemeanor, which may include a fine of not more than $20,000 if the subsequent violation results in the death of an employee 18 years of age or older, or a fine of not more than $40,000 if the subsequent violation results in the death of an employee under 18 years of age.
  - Individuals who willfully make falsifications pertaining to employees 18 years of age or older are guilty of a Class 2 misdemeanor, which may include a fine of up to $10,000.
  - Individuals who willfully make falsifications pertaining to employees less than 18 years of age are guilty of a Class 2 misdemeanor, which may include a fine of up to $20,000.

This act became effective December 1, 2009, and applies to violations occurring or offenses committed on or after that date. (BK)

Unemployment Insurance/Severance Modifications

S.L. 2009-366 (HB 1090) amends the unemployment insurance law definition of "total and partial unemployment" to provide that an individual who receives severance pay may be considered unemployed and may receive benefits, provided the individual meets the other criteria for determining unemployment. Benefits paid will not be charged against the account of the last employer.

This act became effective October 1, 2009, and expires July 1, 2011. (BP)

Department of Labor/Apprenticeship Program

S.L. 2009-451, Sec. 12.1 (SB 202, Sec. 12.1) imposes a $50 new registration fee and a $50 annual fee on each apprentice covered by a written apprenticeship agreement under the Department of Labor Apprenticeship Program. Thirty dollars of each fee is to be paid by the sponsor and twenty dollars by the apprentice, and these fees are to be remitted by the sponsor to the Department of Labor and applied to the cost of administering the apprenticeship program. This section authorizes the Commissioner of Labor to adopt rules to implement these provisions.

This section became effective July 1, 2009. (BP)

Department of Labor/Review All Fees Biennially

S.L. 2009-451, Sec. 12.2 (SB 202, Sec. 12.2) directs the Department of Labor, no later than February 1 of each odd-numbered year, to review all fees charged under its authority and to determine if any of the fees should be changed. This section directs the Department to report all

of the information reported to the Office of State Budget and Management for its Biennial Fee Report and the names of programs supported by the fee, total expenditures of the programs, any recommendations for changing the fee amount, an evaluation of inflation since the fee was last changed, and any other relevant information, to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division.

This section became effective July 1, 2009. (BP)

Industrial Commission / Safety Education Section

S.L. 2009-451, Sec. 14.16 (SB 202, Sec. 14.16) imposes a fee, in the amount set by the Industrial Commission, on:

- Employers for whom the Commission provides educational training programs on preventing or reducing accidents or injuries that result in workers' compensation claims.
- Persons for whom the Commission provides other educational services.

This section directs the Commission to report the fees established, pursuant to this provision, to the Joint Legislative Commission on Governmental Operations by September 1, 2009.

This section became effective July 1, 2009. (BP)

Clarifying Changes / Work First Program

S.L. 2009-489 (HB 1280) amends various provisions pertaining to the Work First Program as follows:

- Makes various clarifying changes to the definitions applicable to the Work First Program, and clarifies that Work First Diversion Assistance must be used to address a specific family crisis and not for ongoing or recurrent needs and is limited to once in a 12-month period.
- Deletes references to the First Stop Employment Assistance and states that the Department of Health and Human Services (DHHS) and electing counties (counties approved to develop and administer a local Work First Program) must provide Work First Program assistance to qualified immigrants on the same basis as citizens to the extent permitted by federal law.
- Clarifies the duties of DHHS with respect to the Work First Program and clarifies that DHHS must establish the schedules for the submission of County Plans and must monitor the performance of both Electing Counties and Standard Program Counties.
- Amends the duties of county boards of commissioners in electing counties.
- Removes the authority for electing counties to allow cases to be considered a family case where the benefits are paid only for the child. County Plans also do not have to include (i) the number of MRAs entered into by the county, and (ii) a list of the community service programs equivalent to full-time employment that are being offered.
- Removes the duty for DHHS to coordinate activities of other State agencies to provide technical support to Electing Counties in developing their County Plans.
- Provides that the Standard Work First Program must be administered by county departments of social services. Rewrites how outcome and performance measures are established by stating that the Work First Program should meet or exceed the federal Work Participation Rate of 50% for all Work Eligible families and 90% for all two-parent families.
- Amends the duties of county departments of social services and county boards of commissioners with respect to the Standard Work First Program, and eliminates the

requirement that Standard Program Counties submit a County Plan to DHHS for approval.

- Amends the duties of DHHS with respect to the supervision and monitoring of the Standard Work First Program and the Standard Program Counties.
- Revises the State Plan to ensure that all families with work-eligible parents and parents with children under the age of 12 months receive Work First benefits in the month after compliance with their MRA.
- Clarifies that the Work First Program should meet or exceed the federal Work Participation Rate of 50% for all Work Eligible families and 90% for all two-parent families.
- Discontinues the First Stop Employment Assistance Program and provides that individuals who seek Work First Program assistance and are not exempt from work requirements must now register with the Employment Security Commission for employment services. Each county department of social services must enter into a cooperative agreement with the local Employment Security Commission to operate the job search component of Work First. The act deletes the provision that made the Employment Security Commission the primary job placement entity of Work First. It also removes the requirement that each county Employment Security Commission must organize a Job Service Employer Committee to oversee the operation of the First Stop Employment Program in that county.

This act became effective August 26, 2009. (DC)

Unemployment Insurance/School Teacher-Related Amendments

S.L. 2009-506 (SB 894). See **Education**.

Amend Drug Exam Regulation

S.L. 2009-535 (SB 643) amends the law governing employers' testing of employees for controlled substances. The act allows a prospective employee whose first test shows a positive result to waive a second confirmation test. The waiver must be in writing at the time or after the prospective employee receives the preliminary test result. All screening tests for current employees that produce a positive result must be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

This act became effective August 28, 2009. (DC)

Chapter 16
Local Government

Bill Gilkeson (BG), Brad Krehely (BK), Hal Pell (HP), Giles Perry (GSP),
Ben Popkin (BP), Steve Rose (SR)

Enacted Legislation

Make Overgrown Vegetation Law Statewide

S.L. 2009-19 (SB 452) is a statewide act that authorizes all municipalities to remedy chronic violations of their overgrown vegetation ordinances. The expense of remedying the violation would become a lien upon the chronic violator's property and be collected as unpaid taxes.

Prior law authorizes 26 named municipalities to notify a "chronic violator" that if the property is in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation. A "chronic violator" is defined in the local acts as a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance. The expense of the action would become a lien on the property and would be collected as unpaid taxes.

This act became effective when it was signed by the Governor on April 30, 2009. It provides that municipalities that had ordinances in effect under the prior local acts do not have to re-enact them under the new statewide law and can use those old ordinances without interruption, but any municipality that relies on the new statewide act to adopt an ordinance must make that ordinance effective no earlier than October 1, 2009. (BG)

Sanitary District Quick Take

S.L. 2009-85 (HB 960) grants sanitary districts "quick-take" authority. The act allows sanitary districts to acquire title and the right to immediate possession of condemned property upon the filing of a complaint. The complaint contains a declaration of taking and deposit of estimated just compensation, unless the owner of the property to be condemned institutes an action for injunctive relief. Previously, title and the right to possession vested only upon (i) filing of an answer by the property owner requesting only a determination of just compensation (not challenging authority of the condemnor to take the property), (ii) failure of the property owner to file an answer within 120 days of service of the complaint containing a declaration of taking, or (iii) upon disbursement of the deposit of the estimated just compensation to the property owner.

This act became effective June 11, 2009. (HP)

State Fairgrounds Special Police / Mutual Aid

S.L. 2009-94 (HB 1109) adds Company Police of the Department of Agriculture and Consumer Services as the equivalent of a municipal law enforcement agency. Consequently, the head of the Company Police is authorized to enter into mutual aid agreements with other municipal agencies, or agencies that also have been given that status.

This act became effective June 11, 2009. (SR)

Various Localities Energy Development Incentives

S.L. 2009-95 (SB 52) authorizes all counties and municipalities in the State to adopt ordinances to grant development incentives such as density bonuses, adjustments to otherwise applicable development requirements, or other incentives, if a developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

This act became effective June 11, 2009. (GSP)

Junked and Abandoned Vehicles

S.L. 2009-97 (HB 867) allows any municipality to define, by ordinance, whether a junked motor vehicle is one that is more than five years old and worth less than $100 or is more than five years old and worth less than $500.

This act became effective June 11, 2009. A municipality may adopt an ordinance beginning on June 11, 2009, but the ordinance may not become effective before October 1, 2009. (BK)

Local Government Surplus Property Donations

S.L. 2009-141 (HB 96) authorizes cities, counties, and local boards of education to donate surplus, obsolete, or unused personal property to charter schools and makes technical corrections to that authority.

This act became effective June 19, 2009. (BK)

Clarify Local Government Evacuation Authority

S.L. 2009-146 (SB 256) clarifies the authority of municipalities and cities to enact ordinances ordering evacuations during a state of emergency, and the immunity of persons or entities engaged in statutorily authorized emergency-related activities. The bill includes provisions authorizing the passage of ordinances which:

- Direct and compel evacuations.
- Prescribe the routes, methods, and destinations of evacuations.
- Control ingress and egress of disaster areas.
- Control movements of persons within disaster areas.

Because the statute setting the authority for counties incorporates by reference the authority set forth for municipalities, these same provisions are applicable to county government.

The act also amends G.S. 166A-14(a) to clarify that all activities relating to emergency management, whether provided for in Chapter 166A or elsewhere in the General Statutes, are declared to be governmental functions for purposes of the statutory immunity granted to persons and entities carrying out those emergency management related functions. The act clarifies that the evacuation-related emergency management activities authorized are "governmental functions" for purposes of statutory immunity granted under G.S. 166A-14(a).

This act became effective June 19, 2009. (HP)

Rescind Advanced Property Tax Appraisal

S.L. 2009-180 (HB 1530). See **Finance.**

Strengthen Local Emergency Management

S.L. 2009-196 (HB 380) specifies that local plans and programs relating to emergency management must be consistent with federal and State laws and regulations, and calls for the Division of Emergency Management to review the local plans and programs at least biennially and update them as necessary. The act authorizes counties and incorporated municipalities within the counties' borders to form joint emergency management agencies, and requires that emergency management plans and programs must be consistent with policies and standards set by the Division of Emergency Management (was set by the State). The act clarifies that counties establishing emergency management agencies may be eligible to receive State and federal assistance, removes the $1,000 per fiscal year cap on State funding for operations of county emergency management programs, and provides that, where the appropriation does not specify allocation of funds among counties, the Division will determine the amounts allocated, based in part on the degree to which local programs meet State standards and requirements.

This act became effective October 1, 2009. (BP)

Adjust Conflict Threshold

S.L. 2009-226 (HB 682) raises the dollar thresholds for exempting local government officials in small towns and counties from the criminal prohibition on deriving a direct benefit from a public contract the officials are involved in making or administering.

Prior law prohibited certain local public officials from deriving a benefit from a contract the official administered, if the amount of the agreement between the government and the official does not exceed the following within a 12-month period:

- $12,500 for medically related services.
- $25,000 for other goods and services.

The exemption is not available unless the agreement is entered into publicly, the official entering into the contract abstains from participating or voting, the contract is disclosed in the audited financial report of the local government and in a conspicuous public posting.

S.L. 2009-226 raises the dollar thresholds for contracts exempted from the conflict-of-interest prohibition from $12,500 to $20,000 for medically related services and from $25,000 to $40,000 for other goods and services.

This act became effective October 1, 2009. (BG)

Community Development Target Areas

S.L. 2009-263 (HB 866) allows all municipalities to adopt an ordinance permitting the municipality to do both of the following after declaring a residential [previously only nonresidential] building in a community development target area unsafe: (1) Remove or demolish the residential building, and (2) place a lien on the property for the cost incurred. The municipality would be required to hold a public hearing with at least 10 days' notice before adopting the ordinance.

Legislation authorizing specific local governments to adopt ordinances were repealed on the effective date of July 2, 2009, with a provision that ordinances adopted on or after July 2, 2009 would not become effective until October 1, 2009. (HP)

Statewide Nuisance Notice Authority

S.L. 2009-287 (SB 564) allows all cities and all counties to remedy chronic nuisance violations after giving annual notice to the chronic violator. Previously Cornelius, Davidson, Wilmington, and New Hanover Counties had this authority. The definition remains the same as in the previously-enacted local acts. The bill would repeal the local acts that apply to specific local

governments, but preserve ordinances enacted under the previously existing local acts until further action by the municipalities.

This act became effective July 10, 2009, but ordinances enacted pursuant to this act could not become effective until October 1, 2009. (SR)

City Managers on School Boards

S.L. 2009-321 (HB 661) authorizes a city manager to serve on a county board of education elected on a nonpartisan basis if the population of the city that the city manager is employed by does not exceed 3,000.

This act became effective July 17, 2009. (GSP)

Urban Area Revitalization Made Uniform

S.L. 2009-385 (SB 618) authorizes all municipalities in the State to create urban area revitalization municipal service districts in order to finance, provide, or maintain additional services, facilities, or functions in the district by means of additional property taxes or the issuance of bonds.

This act became effective July 31, 2009. (GSP)

Local Government Code of Ethics

S.L. 2009-403 (HB 1452) requires the governing boards of cities, counties, boards of education, sanitation districts, unified governments, and consolidated city-counties to adopt a resolution or policy containing a code of ethics to guide actions by the members of those boards in the performance of their official duties. The act also requires board members to receive at least two clock hours of ethics education within 12 months of each appointment or election to the office.

The resolution or policy would be required to address at least all of the following:

1. The need to obey all applicable laws regarding official actions taken as a board member.
2. The need to uphold the integrity and independence of the board member's office.
3. The need to avoid impropriety in the exercise of the board member's official duties.
4. The need to faithfully perform the duties of the office.
5. The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

Members of the boards required to adopt a resolution or policy containing a code of ethics must receive at least two clock hours of ethics education within 12 months after initial appointment or election to the office and again within 12 months after each subsequent appointment or election to the office. The education must cover the laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level. The education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at The University of North Carolina – Chapel Hill, or other qualified sources at the choice of the governing board. The clerk of each governing board must maintain a record verifying receipt of the ethics education by each member.

The act directs all the local boards affected by the act to adopt a code of conduct no later than January 1, 2011. The governing boards may look to model local government codes of ethics for guidance in developing the resolution or policy.

This act became effective January 1, 2010. Board members in office on January 1, 2010, are required to receive their initial training within 12 months after that date. (BG)

Appeals of Quasi-Judicial Land-Use Decisions

S.L. 2009-421 (SB 44) establishes a statutory appeals procedure for quasi-judicial decisions of local boards on land use matters. It also requires any local board making a quasi-judicial decision to observe the same conflict of interest standards that apply to boards of adjustment.

This act adds the following statutory procedure, affecting cities and counties, as G.S. 160A-393:

- Application. The procedure applies to appeals of "quasi-judicial decisions" of "decision-making boards."
- Definitions. A "decision making board" is any city council, planning board, board of adjustment, or other board appointed by the city council. A "quasi-judicial decision" is a decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Examples of quasi-judicial decisions are decisions involving variances, as well as special and conditional use permits. Decisions on the approval of site plans may be quasi-judicial if the ordinance authorizes the board to deny the application based in part on whether the application complied with generally stated standards requiring the application of discretion on the findings of fact to be made by the board.
- Filing the Petition. An appeal is initiated by the filing of a petition for writ of certiorari stating the facts to be reviewed, the grounds for the error, the relief the petitioner seeks, and whether the petitioner alleges an impermissible conflict of interest.
- Standing. The following persons have standing to file a petition:
  - A person who had a property interest in the property, an option or contract to purchase the property, or was an applicant before the decision-making board.
  - Any person who will suffer special damages as a result of the decision being appealed. In *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640 (2008), the North Carolina Supreme Court took a broad view of "special damages."
  - A property owners association, neighborhood association, or similar civic association, if any of its members have standing as an individual, if the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.
  - A city if the city council believes the quasi-judicial decision is not consistent with the ordinance adopted by the council.
- Respondent. The respondent in the appeal is the city or county whose board or agency made the decision. This is a change from prior practice, where courts have said that the decision-making board is the respondent. However, the city or county is not the respondent if the city or county is appealing the decision of its own board of adjustment. In that case, the board of adjustment will be the respondent.
- Writ of Certiorari. Upon filing the petition, the petitioner must present a proposed writ of certiorari to the clerk of court in the county where the matter arises. The writ will direct the respondent to prepare and certify to the court a record of the proceedings. The writ also will direct the petitioner to serve the writ on the respondent. The clerk of court is required to issue the writ if it is properly filed. The writ will be issued without notice to the respondent.
- Answer to the Petition. The respondent is not required to file an answer to the petition unless the respondent challenges the petitioner's standing.
- Intervention. Generally, the right to intervene is governed by Rule 24 of the Rules of Civil Procedure. In addition, G.S. 160A-393(h) allows a person who has a property interest in the property, an option or contract to purchase the property, or is an

applicant before the decision-making board to intervene as a matter of right. Otherwise, a person seeking to intervene as a petitioner must have standing to challenge the quasi-judicial decision, and a person seeking to intervene as a respondent must have standing to file a petition if the decision has been in accordance with the relief the petitioner is seeking. This is designed to resolve a conflict of North Carolina Court of Appeals opinions.

- Record and Hearing on the Record. The act defines what the record can consist of and how it can be augmented. The court will be able to allow testimony, affidavits, or additional documents to determine issues of standing, conflict of interest, constitutionality, or statutory authorization.
- Scope of Review. In a hearing on the record, the Superior Court will be required to ensure that the petitioner's rights were not prejudiced because the decision-making body's actions were:
  1. Unconstitutional. This would clear up the question of whether constitutionality is an appropriate consideration in an appeal of a quasi-judicial decision by a board of adjustment.
  2. In excess of authority given it by statute or ordinance.
  3. Inconsistent with what statute or ordinance prescribes as procedure.
  4. Affected by other error of law.
  5. Unsupported by competent evidence. The bill singles out lay opinions of how a certain use of land would affect property values and lay opinions of how a proposed development would increase traffic and states that lay opinions on those subjects would not be competent evidence.
  6. Arbitrary and capricious.

In determining whether the board erred in interpreting an ordinance, the court must review the decision de novo. The court must consider the interpretation of the decision-making board but is not bound by that interpretation and may freely substitute its judgment as appropriate.

- Decision of the Court. The trial court may affirm the decision, reverse the decision and remand with appropriate instructions, or remand the case for further proceedings.
- Ancillary Injunctive Relief. Upon motion of a party, a court may order a party to take or refrain from taking any action consistent with the court's decision on the merits of the appeal. This also clears up uncertainty expressed by courts.

The act applies the new procedure to subdivision plat decisions (if they are quasi-judicial), airport zoning decisions, and extensions of water and sewer lines.

The act clarifies that when any local board makes a quasi-judicial decision, it must observe the same conflict of interest standards that are applicable to boards of adjustment.

This act became effective January 1, 2010, and applies to quasi-judicial decisions made on or after that date. (BG)

City/County/Sanitary District Fees/Internet

S.L. 2009-436 (SB 698) provides when a county or city imposes or increases fees or charges "applicable solely" to the construction of development subject to the provisions of Part 2 of Article 18 of Chapter 153 (counties) or Part 2 of Article 19 of Chapter 160A (cities), notice of the imposition or increase must be posted on the city or county Web site at least 7 days in advance of the first regular meeting where the fee or charge will be discussed, provided the Web site is maintained by municipal or county employees. A public comment period must be provided during consideration of the imposition of or increase in fees or charges. Part 2 of Article 18 of Chapter 153 (counties) and Part 2 of Article 19 of Chapter 160A (cities) govern the regulation of subdivisions by counties and cities.

The same requirement is imposed on sanitary districts and water and sewer authorities with respect to increases in charges or rates applicable solely to the construction of subdivision development for any service they provide.

The requirements in the act are not imposed if the imposition of or increase in fees or charges is contained in a budget document that must be filed with the clerk of the body and for which a public hearing is required.

This act became effective September 1, 2009. (SR)

Regulation of Golf Carts by Local Governments

S.L. 2009-459 (HB 121) authorizes all municipalities and counties in the State to regulate by ordinance the operation of golf carts on public streets, roads, and highways that, in the case of a municipality, are located within their municipal limits or on any property owned or leased by the municipality, and in the case of a county, are located in any unincorporated areas within the county or on any property owned or leased by the county. The act provides that municipalities and counties may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. The act provides any ordinance enacted pursuant to this act is limited to streets, roads, or highways where the speed limit is 35 miles per hour or less, and no person less than 16 years old shall be permitted to operate a golf cart on a public street, road, or highway. The act repeals or rewrites various local acts to conform to the changes made in this act.

This act became effective October 1, 2009. (GSP)

Tort Claims Act/Local Government Opt-In

S.L. 2009-519 (SB 859) provides a city with a population of 500,000 or more (Charlotte) may waive its immunity from civil liability in tort by passing a resolution expressing its intent to waive its sovereign immunity pursuant to the Tort Claims Act. The following modifications of the Tort Claims Act apply to the city's waiver of sovereign immunity:

- Jurisdiction for trying tort claims against the city is in the superior court of the county in which the city is principally located (rather than in the Industrial Commission as the Tort Claims Act provides).
- The city is solely responsible for the expenses of its legal representation and for payment of claims for which it is liable.
- Appeals to the Court of Appeals are treated in the same manner as an appeal from a decision of the Industrial Commission.

Limitations on claims, the burden of proof and defense, and the limitations on payments set out in the General Statutes apply to claims filed with the Superior Court Division.

The provisions authorizing waiver of immunity for cities who purchase insurance do not apply to a city that adopts a resolution under this act. The city may purchase liability insurance or adopt a resolution creating a self-funded reserve to pay claims for negligence. The act restricts the introduction of evidence to the jury concerning the city's insurance and prohibits any inference that the city's potential liability is covered by insurance. All matters related to insurance are to be determined by the judge without resort to a jury. The city may waive its right to have insurance coverage issues heard by the judge and may request a jury trial on those issues.

This act became effective October 1, 2009. (BK)

Revolving Loan Fund for Energy Improvements

S.L. 2009-522 (HB 1389). See **Energy.**

Critical Infrastructure Assessment Changes

S.L. 2009-525 (SB 97). See **Finance.**

Building Code Exclusion/Certain Wiring

S.L. 2009-532 (HB 1409). See **Commercial Law and Consumer Protection.**

Affordable Housing/No Discrimination

S.L. 2009-533 (SB 810) amends the North Carolina Fair Housing Act (Act). The Act makes it unlawful to discriminate in housing based on race, color, religion, sex, national origin, handicapping condition, or familial status.

This act adds a new item to the list of unlawful housing practices, making it unlawful to make a land-use decision or to issue or refuse to issue a permit for development based on race, color, religion, sex, national origin, handicapping condition, familial status, or the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below 80% of the area's median income. However, it is not unlawful if land-use or permitting decisions are based on considerations of limiting high concentrations of affordable housing.

This act became effective August 28, 2009. (HP)

Solar Collectors on Residential Properties

S.L. 2009-553 (HB 1387). See **Energy.**

Authorize Insurance for Former Employees

S.L. 2009-564 (SB 468) authorizes counties to provide health insurance to former officers and employees, whether they receive retirement benefits or not (previously was allowed for only those receiving retirement benefits), and continues to allow the county or the person to pay the full cost, or share the cost of the insurance, at the option of the county (effective August 28, 2009).

The act authorizes counties to provide health insurance to former officers and employees of the county who have attained ten years of service with the county, who separate from service with the county on or after October 1, 2009, and who do not receive retirement benefits. Finally, the act prohibits counties that either cover only their active employees, or cover both active and retired (on or after October 1, 2009) employees under the State Health Plan from providing health insurance through the State Health Plan to former officers and employees who do not receive retirement benefits. The county may provide any other form of health insurance to these officers and employees, but the officer or employee must pay the entire premium.

This act became effective January 1, 2010. (BP)

Amend Allocation of Tennessee Valley Authority Payment

S.L. 2009-569 (HB 1570) changes the methodology used for the allocation of payments made by the Tennessee Valley Authority (TVA) to the State and local governments. The allocation will be made on the basis of each local government's percentage of the total value of the TVA property in the State instead of on the basis of the percentage of loss of taxes to each local government. When calculating the allocation of the TVA's valuation among the local governments, the Department of Revenue will no longer use the tax rate fixed by the local

government, but will determine valuation as if the property were owned or operated by a privately owned utility.

This act became effective October 1, 2009. (BP)

Land Development Permit Changes

S.L. 2009-572 (HB 1490). See **Commercial Law & Consumer Protection.**

Chapter 17
Military, Veterans', and Indian Affairs

Bill Gilkeson (BG), Hal Pell (HP)

Enacted Legislation

Military and Veterans Affairs

Federal Reservation Statute

S.L. 2009-20 (HB 613). See **State Government**.

Active Duty Hunting/Fishing License Exemption

S.L. 2009-25 (HB 97) allows residents of North Carolina who are serving on full-time active military duty outside the State, in either the Armed Forces of the United States or a Reserve component of the Armed Forces, to hunt or fish while on leave in North Carolina for 30 days or less without obtaining a license. The act also exempts qualifying individuals from having to pay certain license fees for hunting and fishing.

Exempted persons must have on their person, at all times during the hunting or fishing activity, (i) their military identification card, and (ii) a copy of the official document issued by their unit which confirms their status on leave from a duty station outside North Carolina.

Anyone exempted from licensing requirements under this bill remains subject to hunting safety requirements and any other requirements to which a holder of the license is subject.

This act became effective July 1, 2009. (BG)

Unemployment Insurance/Severely Disabled Veterans

S.L. 2009-101 (HB 1124). See **Labor and Employment**.

Require Documentation-Certain Special Plates

S.L. 2009-121 (HB 1094). See **Transportation**.

U.S. 17/U.S. 70 Marine Corps Highway

S.L. 2009-198 (HB 1021) designates the portion of U.S. 17 from just south of Jacksonville, and north to Edenton, with a spur going southeast along U.S. 70 from U.S. 17 in New Bern to Cherry Point Marine Air Station, as "The U.S. Marine Corps Highway: Home of the Carolina-Based Marines since 1941." The act details the history of the Marine Corps' presence along the highway, including the development of Camp LeJeune in Jacksonville.

The Department of Transportation (DOT) is directed to collaborate with the Highway 17 Association, the Department of Commerce, and the Department of Cultural Resources, about appropriate signage "to maximize the economic development opportunities" along the Marine Corps Highway. It authorizes DOT to contract with nongovernmental entities to produce, install,

and maintain the signs. The act provides that no State funds shall be expended for any purpose authorized by the bill, but that all costs will be paid by the Marine Corps Parkway Association.

This act became effective June 26, 2009. (BG)

Wearing of Medals by Public Safety Personnel

S.L. 2009-240 (HB 631) provides that uniformed public safety officers may wear military service medals on their uniforms during the following dates:

- The business week prior to Memorial Day and Veterans Day.
- On Memorial Day and Veterans Day.
- The day after Memorial Day and Veterans Day.

Military service medals include any medal, badge, ribbon, or other decoration awarded by either the active or reserve components of the Armed Forces of the United States. The law applies to law enforcement officers, firefighters, or emergency medical services personnel who are employees of a public safety agency. The employer of eligible personnel has the authority to prohibit the wearing of military service medals if the wearing would pose a safety hazard to the officer or the public.

This act became effective June 30, 2009. (HP)

License Renewal / Active Military Duty

S.L. 2009-274 (HB 98) modifies drivers license renewal provisions for members of the Armed Forces, and reserve components of the Armed Forces who are on active duty, in the following ways:

- Allows renewal of a license upon receipt of deployment orders, even if it is outside of the generally applicable renewal period of 180 days before expiration.
- Extends the validity of a drivers license that expired while a member of a reserve component of the Armed Forces was on active duty outside the State. The extension is for 60 days after the date of release from active duty, with a maximum of 18 months from the date the license expired.
- Allows a reservist on active duty, who is stationed outside the State, to renew a drivers license by mail. Previously, the law allowing renewal by mail applied only to active duty servicemembers

This act became effective July 10, 2009, and applies to all licenses expiring on or after that date. (HP)

End Department of Administration Supervision of Local Veterans Service

S.L. 2009-280 (HB 1009) amends the statutory powers and duties of the Department of Administration by removing the duty of supervision of employees at local veterans service offices. The law still requires the Department to train and assist the local offices, to include Indian tribe offices, and the local offices are to operate in compliance with Department policies and procedures.

This act became effective July 10, 2009. (HP)

Capitalize National Guard / General Statutes Commission Study

S.L. 2009-281 (HB 632) directs the Revisor of Statutes to capitalize both words of the term "National Guard" wherever it appears in the NC General Statutes. The act authorizes the

General Statutes Commission to study other references to military organizations, and recommend to the 2010 Regular Session of the 2009 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal or state military organizations.

This act became effective July 10, 2009. (BG)

Waive Commercial Drivers License Test Requirement for Military Personnel

S.L. 2009-494 (SB 423). See **Transportation**.

Occupational Licensing Board Waiver Rules/Military Personnel

S.L. 2009-458 (HB 1411). See **Occupational Boards and Licensing**.

Absentee Voting Improvements

S.L. 2009-537 (SB 253). See **Constitution and Elections**.

Indian Affairs

Commission of Indian Affairs Interim Appointments

S.L. 2009-39 (HB 411) provides for the appointment of interim members to the Commission on Indian Affairs in the absence of appointment by the statutory procedure. If the tribes or groups designated by statute do not fill a vacant position, for any reason, then the Commission has the authority to appoint a tribe or group member until the position is filled in the normal manner. The interim appointee would serve until the new tribe or group member is selected.

This act became effective July 1, 2009. (HP)

Studies

New/Independent Studies/Commissions

North Carolina Institute of Medicine to Study Mental Health, Developmental Disabilities, and Substance Abuse Services that are Funded with Medicaid Funds and with State Funds

S.L. 2009-574, Part XVI (HB 945, Part XVI) authorizes the North Carolina Institute of Medicine (NCIOM) to study Medicaid-funded and State-funded mental health, developmental disabilities, and substance abuse services currently available to active, reserve, and veteran members of the military and National Guard and their families, as well as the need for increased State services to these individuals. The NCIOM may report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before the convening of the 2010 Regular Session of the 2009 General Assembly.

This part became effective September 10, 2009. (SB)

North Carolina Institute of Medicine to Study the Provision of State Mental Health, Developmental Disabilities, and Substance Abuse Services to Current and Former Members of the Armed Forces and Their Families

S.L. 2009-574, Part XIX (HB 945, Part XIX) authorizes the North Carolina Institute of Medicine (NCIOM) to convene a task force to study and report on issues related to State-funded and Medicaid-funded mental health, developmental disabilities, and substance abuse services currently available to active, reserve, and veteran members of the military and National Guard and their families; and directs the Department of Health and Human Services to cooperate with the NCIOM and provide data necessary for the study. The NCIOM may report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before the convening of the 2010 Regular Session of the 2009 General Assembly.

This part became effective September 10, 2009. (SB)

Chapter 18
Occupational Boards and Licensing

Karen Cochran Brown (KCB); Shawn Parker (SP)
Wendy Graf Ray (WGR); Barbara Riley (BR)

Enacted Legislation

Authorize State Bar to Borrow Funds

S.L. 2009-82 (HB 360) amends G.S. 84-17 and 84-23(d) to authorize the borrowing of money by the Bar with the approval of the Governor and Council of State. Borrowing may be secured or unsecured. The employment of necessary professional assistance for borrowing also is authorized. The authorization will allow the Bar to borrow funds to construct a new facility.

This act became effective June 11, 2009. (BR)

Clarify Licensing Requirements/Out-of-State Weighmasters

S.L. 2009-87 (HB 1108) provides that weighmasters who are licensed out of state, and who apply for North Carolina licensure must provide the most recent inspection report performed by their local or State weights and measures official. The report must have been made within the 12 months preceding the application for State licensure. The act also allows public weighmasters to use a device that has been approved by their local or State weights and measures officials within the 12-month period immediately preceding the weighing date.

This act became effective October 1, 2009, and applies to applicants for licensure on or after that date. (BR)

Title Protection/Social Workers

S.L. 2009-88 (HB 1168) amends the Social Worker Certification and Licensure Act to prohibit the unauthorized use of the title "Social Worker" by individuals lacking the required academic credentials. Under the act, the title "Social Worker" may be used only by those who meet one or more of the following standards:

- Certified or licensed or provisionally licensed under the act.
- Hold a bachelor's or master's degree in social work from an accredited college or university.
- Hold a doctorate in social work.

The act also creates an exemption from the title restriction for certain individuals employed by a local or State governmental agency, or employed in a Human Services agency created by a county.

This act became effective June 11, 2009. (KCB)

Oversight of Licensing Boards

S.L. 2009-125 (HB 221) amends the law governing the Joint Legislative Administrative Procedure Oversight Committee to give it specific authority to review the activities of occupational licensing boards in order to determine whether the boards are operating in accordance with law and are still needed. However, the review will not include decisions concerning Board personnel matters, or determinations on individual licensing applications or individual disciplinary actions.

The act also amends Chapter 93B, which governs occupational licensing boards, as follows:

- Requires that annual and financial reports be filed no later than October 31 of each year. Failure to comply with the requirements will result in a suspension of the board's authority to expend funds until the reports are filed. The Board, however, must continue to issue and renew licenses and the validity of any application or license will not be affected by the suspension.
- Directs the State Auditor to conduct audits on licensing boards from time to time to ensure their proper operation. This provision also directs each licensing board with an annual budget of at least $50,000 to obtain an annual financial audit.
- Adds a new provision requiring licensing board members to obtain training within six months of the member's initial appointment and at least once within every two calendar years thereafter. The board may use its own staff, including its legal advisor, or an outside educational institution, such as the School of Government, to provide the training. The board members must be trained on the statutes governing the board and any rules adopted by the board, as well as several State laws applicable to all State governmental entities. Receipt of the training required by the State Ethics Act and the Lobbying Act satisfies the requirement for training in those areas.

This act became effective October 1, 2009. (KCB)

Amend Nursing Practice Act

S.L. 2009-133 (SB 356) authorizes the Board of Nursing to establish remediation programs for nurses with practice deficiencies, authorizes the Board to subpoena records relevant to complaint-driven Board investigations, repeals obsolete provisions and references, grants the Board discretion (rather than requiring it) to conduct investigations about possible violations of the Act, eliminates required cooperation with the Medical Board in developing programs to train nurses in conducting sexual assault examinations, and authorizes the Board to conduct criminal background checks of applicants for reinstatement or reactivation of a nursing license.

This act became effective June 19, 2009. (SP)

Disapprove North Carolina Medical Board Rule/Report and Publish Certain Judgments, Awards, Payments, Settlements

S.L. 2009-217, Secs. 1-3 (HB 703, Secs. 1-3) disapproves rules relating to the reporting and publication of medical judgments, awards, payments, and settlements, and codifies a variation of those rules in Chapter 90 of the General Statutes by adding a new section which requires licensed physician and physician assistants or candidates for licensure to report to the North Carolina Medical Board:

- All medical judgments or awards.
- All settlements $75,000 or greater occurring on or after May 1, 2008.
- All settlements in the aggregate amount of $75,000 or more where there is a series of payments made to the claimant which in the aggregate, equal or exceed $75,000.

The report must contain specifics relating to the date and location of the incident and date of the award, as well as the specialty the physician/physician assistant was practicing at the time of the incident.

The act further directs the Board to publish the information for a period of seven years from the date of the judgment, award, payment, or settlement (award). The act provides the publication shall not include individually-identifiable numerical values of the award, nor the identity of the patient associated with the award, but must allow the physician or physician

assistant to publish an explanatory statement so long as it conforms to the ethics of the profession and the previously identified standards.

This act became effective June 30, 2009. (SP)

Disapprove Department of Labor Rules- Standards for Power-Operated Cranes

S.L. 2009-217, Secs. 4-6 (HB 703, Secs. 4-6) disapproves a Department of Labor rule which set standards for power-operated cranes and derricks used in construction and directs the Department immediately to adopt a temporary rule substantially identical to the disapproved rule, except that it must include an exclusion for service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries.

This act became effective June 30, 2009. (SP)

Legal Services Clarification

S.L. 2009-231 (SB 763) clarifies that the following non-profit entities may render legal services:

- A 501(c)(3) non-profit operating in North Carolina as a public interest law firm as defined by the applicable Internal Revenue Service guidelines.
- A 501(c)(3) non-profit organized in North Carolina for the primary purpose of rendering indigent legal services.
- To render legal services a 501(c)(3) must comply with all of the following:
  - Have a governing structure that does not permit an individual or group of individuals other than an attorney duly licensed to practice law in North Carolina to control the manner or course of the legal services rendered.
  - Must continually satisfy the criteria established by the Internal Revenue Service for 501(c)(3) status.
  - Not condition the provision of legal services upon the purchase or payment for any product, good, or service other than the legal service rendered.

This act became effective June 30, 2009. (BR)

Allow Dietetics/Nutrition Board/Recover Costs

S.L. 2009-271 (HB 886) authorizes the Board of Dietetics/Nutrition to assess the costs associated with disciplinary proceedings against a licensee found to be in violation of the licensing statutes or rules and provides that the costs recovered are the property of the Board.

This act became effective October 1, 2009. (SP)

Amend Dentistry Laws/Out of State Dentists

S.L. 2009-289 (SB 694) authorizes the North Carolina State Board of Dental Examiners to waive for a period of up to twelve months in-State practice requirements of dentists issued a license by credentialing when the out-of-state practice actions are in connection with formal contract or employment arrangements and are to provide needed clinical dental care to patients who are part of an identified ethnic or racial minority group living in a region with low access to dental care.

This act became effective July 10, 2009. (SP)

Amend Private Protective Services Act

S.L. 2009-328 (SB 584) amends the Private Protective Services Act, the law regulating the private protective services profession, as follows:

Definition of "private protective services." – The act clarifies that "private protective services" does not include any person engaged in computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information, or any person engaged in computer network or system vulnerability testing.

Confidential investigations. – The Attorney General has the authority to investigate violations of the Act and report to the Board. The act makes these investigations confidential and not subject to the public records law until the investigation is complete and a report is presented to the Board.

Time within which a substitute qualifying agent must be named. – Entities licensed by the Board are required to employ a qualifying agent. If the qualifying agent ceases to serve, the business must obtain a substitute agent within 30 days, but the Board, prior to this act, was authorized to extend that time to three months for good cause. The act extends the time within which a substitute qualifying agent must be named to six months, after an applicant petitions the Board, and the Board holds a hearing.

Criminal background checks. – The act amends the requirement for the Board to provide fingerprints to the Department of Justice for background checks of license applicants, by requiring the fingerprint check for new applicants only and making it optional for renewals. The Board may use third-party criminal record reporting services and require an applicant to pay the reporting service for the cost of the report.

Fee changes. – In 2007, the term for licenses issued by the Board was changed from one year to two years. The act conforms the term of the branch office license from one year to two years. The act amends the fee provision to clarify license fees per year, and specifies late renewal fees must be paid within 90 days of the date of license expiration.

The act also provides a reduced fee of up to $100 for an application that is resubmitted for correctable errors.

Grounds for denying, suspending, revoking a license. – The act adds new grounds for denying, suspending, or revoking a license:

- Failure to cooperate with the Board during an investigation.
- Failure to make disclosures or provide documents to the Board as required.
- Dereliction of duty or otherwise deceiving, defrauding, or harming the public in the course of professional activities or services.
- Demonstrated lack of financial responsibility.

Persons prohibited from license, registration, permit. – Prior to this act, sworn court officials and holders of a company police commission were prohibited from being licensed, registered, or permitted in the private protective services profession. This act allows them to be registered or permitted, but not licensed.

Firearms training and registration requirements. – Licensees that carry a firearm in the performance of their duties must be issued a firearm registration permit by the Board. The permit requires classroom training and a minimum qualifying score on an approved target course. The act requires registration of an individual carrying a firearm within 30 days of employment. It also requires that an individual receive training prior to engaging in private protective services activity.

Repeal provision allowing mace. – The act repeals a provision that authorized security guards to possess and use mace, as mace is no longer used.

Change of ownership of a licensed business. – The act adds a new section to the statutes setting out specific notice requirements when a licensed business transfers ownership, control, or a majority of assets to another person, firm, association, or corporation.

Convert Private Protective Services Recovery Fund to Education Fund. – Prior to this act, there was a Private Protective Services Recovery Fund, which was intended to be used

for the payment of claims of aggrieved parties that suffered a monetary loss because of acts committed by a private protective services licensee, with some excess funds going towards education, training, and research projects to benefit licensees and the industry. New applicants and licensees are charged additional fees to be contributed to the Fund. The act amends the law to make the Fund an education fund only, allowing all of the funds to be used for education, training, and research projects.

The act also conforms the criminal background check provisions of the Alarm Systems Licensing Board with the provisions of the Private Protective Services Board. The boards share a staff.

This act became effective October 1, 2009. (WGR)

Amend Laws/Refrigeration Contractors

S.L. 2009-333 (HB 1105) amends the laws regulating refrigeration contractors. Any person or corporation who engages in refrigeration business or contracting in North Carolina must apply to the State Board of Refrigeration Examiners for a license. A violation of these provisions is currently a Class 2 misdemeanor, and the Board also may seek injunctive relief when appropriate. The law also provides for revocation or suspension of licenses for cause.

This act amends the law pertaining to refrigeration contractors in the following ways:

- The definition of "refrigeration trade business" does not include either of the following:
  - The installation of self-contained commercial refrigeration units equipped with an Original Equipment Manufacturer (OEM) molded plug that does not require the opening of service valves or the replacement of lamps, fuses, and door gaskets.
  - The installation and servicing of domestic household self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently installed and do not require the opening of service valves.
- Regular examinations for licensing in refrigeration are to be given in the office of the Board by appointment (prior to this act, exams were given in the months of April and October annually and additionally, as the Board deemed necessary).
- The Board is required to adopt and publish rules and regulations consistent with the provisions of the Administrative Procedure Act.
- When the Board accepts an offer to compromise a charge against a licensee where the accused pays a penalty to the Board, the penalty funds are to be remitted to the Civil Penalty and Forfeiture Fund.
- The penalty for violations of the provisions pertaining to refrigeration contractors is a Class 3 misdemeanor (rather than a Class 2 misdemeanor).
- The Board is authorized to employ or retain legal counsel for matters and purposes the Board deems fit and proper, with written permission from the Attorney General.
- The Board is authorized to own or otherwise deal with real property in the same manner as a private person or a corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance would be limited to the assets, income, and revenues of the Board. The Board also may rent or purchase equipment and supplies, and purchase insurance to cover its activities, operations, or employees.
- The Board is authorized to require, as part of the renewal of a license, the licensee's complete continuing education in subjects related to refrigeration contracting.

The provision of this act that requires rulemaking under the Administrative Procedure Act became effective October 1, 2009. The provision of this act that makes violations of the law pertaining to refrigeration contractors a Class 3 misdemeanor became effective December 1, 2009, and applies to offenses occurring on or after that date. The provision of this act that

authorizes the Board to require continuing education for licensees becomes effective January 1, 2012. The remainder of the act became effective July 24, 2009. (WGR)

Amend Certified Public Accountant Laws/Practice Privileges

S.L. 2009-347 (SB 647) amends the law relating to certified public accountants (CPAs) to allow a public accountant certified or licensed in another state to practice in this State under certain circumstances. The act creates an automatic practice privilege allowing an individual to perform services in person, by mail, telephone, or electronic means, without notice to the Board or payment of the fee, if the individual:

- Holds a valid and unrevoked certificate as a CPA issued by another state, U.S. territory, or the District of Columbia.
- Holds a valid and unrevoked license or permit to practice as a CPA issued by another state, U.S. territory, or the District of Columbia.
- Has passed the Uniform CPA Examination.
- Has not been convicted of a felony and has not been convicted of a crime involving dishonesty, deceit, or fraud unless the licensing state has determined the conviction has no effect on the individual's license.

An out-of-state firm also can exercise the practice privilege if it consents to comply with the law and rules of this State and to be subject to the jurisdiction and disciplinary authority of the Board. The firm also must provide notice to the Board if an individual with the firm performs any of the following services for a client in this State:

- A financial statement audit or other engagement performed in accordance with the Statements on Auditing Standards.
- An examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements.
- An engagement performed in accordance with the Public Company Accounting Oversight Board auditing standards.

The act also provides that the rules of professional conduct adopted by the State Board of Certified Public Accountant Examiners apply to persons exercising the out-of-state practice privilege and that the Board has the authority to discipline persons exercising the out-of-state practice privilege in the same manner as currently provided for accountants certified in this State.

This act became effective July 27, 2009. (KCB)

Amend Professional Counselors Act/Fees

S.L. 2009-367 (HB 746) amends the Licensed Professional Counselors Act (Act) as follows:

- Expands the definition of "counseling" to apply to offering assistance through the counseling relationship by evaluating and treating mental disorders and other conditions. Adds definitions and qualifications for "licensed professional counselor associate" and "licensed professional counselor supervisor". Modifies licensure and qualifications for licensed professional counselors in terms of education requirements, exam requirements, hours of supervised professional practice, and hours of professional experience.
- Makes it unlawful for anyone not licensed under the Act to engage in the practice of counseling or to use in any way titles and acronyms to indicate or imply that the person is a licensed professional counselor.
- Clarifies that any person counseling within the scope of employment at a private institution of higher education, a public institution of higher education or a community college, is exempt from licensure requirements. Removes certain other persons from the list of those exempt from licensure, including persons (i) counseling

as a supervised counselor in a supervised professional practice for a specified period of time, (ii) performing counseling as an employee of an area facility operated by or under contract with mental health, developmental disabilities, and substance abuse authority, (iii) performing counseling as an employee of a licensed hospital or other health care facility under the supervision of a qualified professional, and (iv) any employee assistance professional providing core specific employee assistance program activities.

- Provides for criminal history record checks for applicants for licensure as professional counselors.
- Makes a number of changes with respect to the North Carolina Board of Licensed Professional Counselors (Board) as follows:
  - Clarifies that (i) any State or nationally-recognized professional association representing professional counselors may make recommendations to the Governor for membership on the Board, and (ii) appointees to the Board continue to serve until a successor is appointed and qualified.
  - Deletes the requirement that the Board expenditures may not exceed revenues during any fiscal year. Raises the cap on fees collected by the Board for initial or renewal applications from $100 to $200, and raises the cap on the late renewal fee from $25 to $75.
  - Makes substantial changes to the Board's authority to deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under the Act.

Licensed professional counselors who are approved by the Board as qualified clinical supervisors before July 1, 2012, have until July 1, 2014, to meet the new licensed professional counselor supervisor requirements.

This act became effective October 1, 2009. (BR)

Amend Marriage and Family Licensure Laws/Fees

S.L. 2009-393 (SB 935) makes various amendments to the Marriage and Family Therapy Licensure Act (Act). The act sets out requirements for the licensure of marriage and family therapist associates, who are authorized to practice under the supervision of an approved supervisor. The act amends the law pertaining to exemptions from the Act to eliminate an exemption for a person practicing as an employee of a nonprofit organization, and to clarify that a marriage and family therapy intern must be enrolled in a master's level program or higher in a recognized educational institution and under the supervision of a Board-approved training institution in order to be exempt from the Act. No exempt person may hold himself or herself out as being licensed. The act makes a number of other changes as follows:

North Carolina Marriage and Family Therapy Licensure Board:

- Allows the Board to elect a chair and vice-chair from its membership to serve for a four-year term.
- Provides that Board expenditures may not exceed the revenues or the reserves of the Board in any fiscal year.
- Adds to the Board's powers and duties the authority to order records relating to a licensee's practice in the course of investigating a complaint. Any such records are not subject to the public records law.

Licensing Requirements:

- Amends licensing requirements for marriage and family therapists to clarify the educational and experience requirements and changes the examination requirement from an exam administered by the Board to one approved by the Board.
- Adds a new requirement that applicants for licensure as a marriage and family therapy associate must submit the same application information, have the same educational and experience qualifications, and have passed the same examination as

are required of marriage and family therapist applicants. In addition the associate applicant must show evidence of appropriate coursework and have an agreement by an approved supervisor to provide supervision to the applicant.

Licenses/Fees:

- Repeals the Board's authority to grant temporary licenses.
- Provides for fee increases and adds new fees for the following: marriage and family therapy associate license, duplicate license, annual maintenance of inactive status, and an application to extend an associate license.
- Provides that a licensee who requests to be placed on inactive status must pay an annual inactive status maintenance fee.
- Authorizes the Board to waive continuing education requirements for licensees on active military duty who are serving overseas.

Disciplinary Actions:

- Clarifies and expands the Board's authority to take disciplinary or remedial actions. The Board may assess costs against the applicant or licensee for the disciplinary action. The Board may petition the court to order the applicant or licensee to submit to psychological or physical evaluations. The Board must provide a hearing to any applicant or licensee who is subject to discipline. The records and other documents used by the Board in the course of an investigation are not subject to the Public Records law. However, if the record is admitted in evidence in a hearing, it becomes a public record.

Criminal History:

- Authorizes the Board to request that the applicant or licensee undergo a criminal history record check to reveal a conviction of a State or federal crime.
- Allows the Department of Justice to conduct criminal history record checks for applicants for licensure as a marriage and family therapist or associate.

This act became effective October 1, 2009. (KCB)

Exempt Plumbing Contractor/Well Contractor Requirements

S.L. 2009-418 (SB 687) exempts licensed plumbing contractors from well contractor certification requirements when performing certain well contractor activities. The plumbing contractor must have documentation that he or she has attended a continuing education course that covered well seal installation, protection, and sanitation within the two years prior to the work being performed and must remain on site while the work is performed until the well is disinfected and sealed. In addition, the State Board of Plumbing, Heating and Fire Sprinkler Contractors must ensure that continuing education courses covering well seal installation, protection, and sanitation are available to licensed plumbing contractors during each six-month continuing education course schedule.

This act became effective August 5, 2009. (WGR)

Polysomnography Practice Act

S.L. 2009-434 (HB 819) makes it unlawful for a person to practice polysomnography, or to represent that they are credentialed to practice polysomnography, unless the person has filed a copy of their credentials as a registered polysomnologist from the Board of Registered Polysomnographic Technologists with the Medical Board and paid a $50 filing fee. The act defines polysomnography as an allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and sleep related disorders.

This act became effective October 1, 2009. (SP)

Rewrite Sanitarian Examiners Laws/Fees

S.L. 2009-443 (SB 834) amends the law governing the certification and practice of sanitarians in the State including the following:

- Changes the term "sanitarians" to "environmental health specialists." An "environmental health specialist" is a public health professional who meets specified educational requirements and has attained specialized training and environmental health field experience to plan, organize, manage, provide, execute, and evaluate one or more of the elements comprising the field of environmental health practice.
- Revises training, registration, and grounds for suspension or revocation of individuals certified as an environmental health specialist or an environmental health specialist intern. Requires graduation from accredited baccalaureate or postgraduate degree programs plus either one year of experience in the field (EHAC accredited) or two years and 30 semester hours of physical or biological science credit (CHEA accredited). The act also authorizes the Board to issue a certificate to a registered environmental health specialist intern working in the field who does not meet the experience requirement, for a period of up to three years from initial registration, provided the intern satisfies the educational requirement.
- Creates a new fee for applications and examinations and raises other fees charged to specialists.
- Makes changes to the Board of Sanitarian Examiners, including (1) expanding the Board's investigative authority; (2) adding three new members to the Board; (3) lowering the per diem rate of Board members; and (4) directing the Board to adopt a Code of Ethics.

This act became effective August 7, 2009. (KCB)

Occupational Licensing Board Waiver Rules/Military Personnel

S.L. 2009-458 (HB 1411) requires occupational licensing boards to adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to occupational licensure for individuals serving in the armed forces who have been granted an extension of time to file a tax return.

North Carolina law provides that an individual who is serving in the armed forces of the United States, and who has been granted an extension of time to file a tax return, is also granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax, which would be any period that federal tax deadlines are postponed under the Code because of the taxpayer's service in a combat zone or the taxpayer's hospitalization because of injuries received while serving in a combat zone.

This act requires occupational licensing boards to adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual in instances where the individual meets all of the following criteria:

- Is currently licensed and in good standing with the board.
- Is serving in the armed forces of the United States.
- Would be granted an extension of time to file a tax return under North Carolina law.

This act became effective August 7, 2009. (WGR)

Allow In-Home Licensed Barbering

S.L. 2009-471 (HB 596) directs the Board of Barber examiners to adopt rules authorizing a barber to practice inside a client's home due to medical necessity. The act excludes the executive director of the North Carolina Board of Cosmetic Art Examiners from the State Personnel Act and provides the executive director serves at the pleasure of the Board.

This act became effective August 26, 2009. (SP)

Amend Home Inspector Licensure Laws

S.L. 2009-509 (SB 1007) makes various changes to the Home Inspector Licensure Law. The following changes became effective October 1, 2009:

- Increases the total number of continuing education hours the Board may require of licensed home inspectors.
- Requires home inspectors and associates licensed before September 30, 2011, to complete a continuing education program focused on inspection technique and reporting requirements.
- Requires licensed home inspectors to include certain information in home inspection reports. Home inspectors must describe on the summary page of a home inspection report whether any system or component of the home appears not to function as intended, based on documented tangible evidence, and requires further investigation.
- Requires licensees to report criminal convictions and discipline by other occupational licensing boards to the Board within 60 days of the conviction or disciplinary action.

The following changes become effective October 1, 2011:

- Authorizes the Home Inspector Licensure Board to establish an education program to replace the associate home inspector license.
- Provides that general contractors, architects, and professional engineers that may be licensed as home inspectors without completing the education program, must be licensed for at least six months in their respective fields, and those qualifying under this provision on or after October 1, 2011, must maintain good standing with their respective licensing Board.
- Requires licensed home inspectors to maintain certain insurance requirements, including general liability insurance of $250,000 and either minimum net assets in an amount set by the Board of not less than $5,000 and not more than $10,000, a bond in an amount set by the Board of not less than $5,000 and not more than $10,000, or errors and omission insurance of $250,000.

The act also sunsets provisions related to associate home inspector licensure and provides that the Board may not accept applications for associate home inspector licensees after April 1, 2011, and the Board may not renew an associate home inspector license after October 1, 2013.

Except as otherwise provided, this act became effective August 26, 2009. (KCB)

Natural Hair Care Licensure/Cosmetic Art Act

S.L. 2009-521 (HB 291) amends the Cosmetic Art Act to require the licensure of persons engaged in the practice of natural hair care. "Natural hair care" is a service that results in tension on hair strands or roots by twisting, wrapping, extending, weaving, or locking hair by hand or mechanical device, including the use of artificial or natural hair. Licensure requires successful completion of at least 300 hours of a natural hair care specialist curriculum in an approved cosmetic art school, passage of an examination conducted by the Board, and payment of a $10 license fee. The license must be renewed on or before October 1. A natural hair care teacher must hold a natural hair care license, and must submit proof of either (1) practice as a

natural hair care specialist for a period equivalent to two years of full-time work immediately prior to the time of the application, or (2) successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school. Practicing natural hair care without a license is a Class 3 misdemeanor.

The act provides the following exemptions:

- A person who submits proof to the Board that he or she is actively engaged in the practice of natural hair care on the effective date of the act is exempt from the education requirement; however, the person must pass an examination and pay the required licensing fee.
- There is a one-year grace period for a natural hair care shop to comply with licensing requirements for cosmetic art shops, if the shop submits proof that it is actively engaged in the practice of natural hair care on the effective date of the act. All persons who do not apply to the Board within one year of the effective date of the act will be required to complete all training and examination requirements, and to otherwise comply with the provisions of the Cosmetic Art Act.
- A licensee who is in active practice as a natural hair care specialist, has practiced for at least 10 years in that profession, and is 60 years of age or older does not have to meet the continuing education requirements.

This act also amends the law with regard to the employees of the Board of Cosmetic Art Examiners. (See S.L. 2009-471 (HB 596) for further amendments to this provision).

The section of the act relating to Board employees became effective August 26, 2009. The remainder of this act becomes effective July 1, 2010, and applies to acts occurring on or after that date. (KCB)

Amend Alarm Systems Licensing Act

S.L. 2009-557 (SB 1073) makes amendments to the Alarm Systems Licensing Act, which governs the licensing and registration of persons engaged in the alarm systems business. This act amends the Alarm System Licensing Act as follows:

- Amends the definition of the term "alarm system business" by removing the requirement that a person selling alarm system devices make a personal inspection of the interior of the residence or business to advise, design, or consult with the customer.
- Extends from 30 to 90 days the time within which the business must identify a new qualifying agent when the original qualifying agent ceases to serve.
- Authorizes a licensee to hire an unlicensed consultant to troubleshoot in a specific location for a period of up to 48 hours within a one-month period. The licensee must submit a report on this activity to the Board within 30 days of the consultation.
- Clarifies that an investigation of a complaint under the Act is deemed confidential and not subject to the Public Records Law until released to the Board upon its completion. However, the report can be released to the licensee before being presented to the Board.
- Provides that a licensee must notify the Board before making changes to a branch office.
- Authorizes the Board to charge a late registration fee of up to $20 for an application submitted no more than 30 days after the expiration of the registration. After 30 days, the applicant must be registered as a new applicant.
- Extends from 20 to 30 days the time within which a licensee must register a new employee. To register the employee, the licensee must submit the applicant's fingerprints, a recent color photograph of the applicant, and statements of any criminal records deemed appropriate by the Board.
    - Expands the list of activities for which the Board may take disciplinary action.

- Provides that a contract for sale, installation, or service of an alarm system entered into by an unlicensed or unregistered person is a threat to public safety, and the contract shall be deemed void and unenforceable.
- Requires that a licensee be able to prove that the business' license is valid and that the employee or agent is properly registered in order to commence or maintain an action to collect compensation. Makes it an unfair and deceptive trade practice to engage in the alarm systems business without a license or registration.
- Converts the Alarm Systems Recovery Fund to the Alarm Systems Education Fund. The Board is authorized to charge licensees a $50 fee to maintain the fund. The purpose of the fund is to provide exclusively for the education of licensees and registrants.

This act became effective October 1, 2009, and applies to licenses or registrations issued or renewed on or after that date. (WGR)

Disciplinary Proceedings / North Carolina Medical Board

S.L. 2009-558 (SB 958) amends laws relating to the authority of the North Carolina Medical Board (Board) to discipline its licensees. The act does the following:

- Prohibits a Board member who initiates an investigation from participating in the adjudication of the matter.
- Prohibits a Board member from serving as an expert in investigation proceedings or as the basis of initiating an investigation; and provides a time frame of six months to complete the investigation.
- Requires the Board to provide specified information to a licensee at various times during the disciplinary process, including information about the complaint or investigation and the licensee's rights and duties.
- Allows a licensee to request an informal, non-public pre-charge conference by making a written request.
- Directs the Board to retain independent counsel to advise the Board on contested matters of procedure and evidence and prohibits ex parte communication for both parties on an issue of fact or question of law with an individual participating in a final disciplinary decision.
- Authorizes an appeal to any public disciplinary action by the Board against a licensee be filed in the Superior Court of Wake County or the licensee's county of residence.

This act became effective October 1, 2009. (SP)

Chapter 19
Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Bill Gilkeson (BG), Kory Goldsmith KG),
Brad Krehely (BK), Jennifer McGinnis (JLM)

Enacted Legislation

Prudent Management of Institutional Funds

S.L. 2009-8 (SB 127) enacts the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which replaces the Uniform Management of Institutional Funds Act enacted in 1985. The UPMIFA is designed to provide guidance and authority to institutions within its scope concerning the management, investment, and expenditure of institutional funds, the delegation of investment authority, and the release of donor-imposed restrictions on the use or investment of institutional funds. The UPMIFA does the following:

- Provides updated, more specific standards for the prudent management and investment of institutional funds and spending from endowment funds.
- Eliminates a provision in the prior law that allowed institutions to spend only amounts above "historic dollar value" that the institution determined to be prudent, and establishes a new standard with better guidance on making prudent determinations about accumulating or spending endowment funds.
- Updates the provisions governing the delegation of management and investment functions.
- Provides a new procedure for releasing or modifying donor-imposed restrictions on the use or investment of smaller, older funds where the restriction has become unlawful, impracticable, impossible to achieve, or wasteful.

The act also makes related amendments to the North Carolina Uniform Trust Code and the statute relating to endowment funds of The University of North Carolina and authorizes the printing of drafter's comments.

This act became effective March 19, 2009. (KCB)

Renunciation Amendments

S.L. 2009-48 (HB 800) makes several changes to the law concerning renunciation of succession to property interests, and makes related changes to the laws concerning trusts, powers of attorney, and administration of decedents' estates.

Chapter 31B of the General Statutes provides a procedure for a person to renounce an interest in or power over property to which that person otherwise would have become entitled, as for example, by inheritance.

The act makes the following changes:

- Adds trustees to the list of persons who may renounce. (Guardians, personal representatives of decedents' estates, and attorneys-in-fact already were able to renounce.)
- Adds donees to the list of persons who may renounce.
- Allows the parent of a minor to renounce, on the minor's behalf, property that would have passed to the minor as the result of that parent's renunciation.
- Provides that a personal representative or trustee may renounce even if the governing instrument provides otherwise.
- Provides that an attorney-in-fact may renounce only if expressly authorized by the principal.

- Provides optional procedures for a fiduciary to obtain a judicial determination as to whether a renunciation would be or is compatible with the fiduciary's duties.
- Gives more detailed instructions on delivering and filing renunciations.
- Makes a number of clarifying, stylistic, and organizational amendments to Chapter 31B, and makes conforming changes to other chapters.

This act became effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date. (BG)

Effect of Caveat on Estate Administration

S.L. 2009-131 (SB 724) sets out actions and payments that may occur while a caveat to a will proceeding is pending. The purpose of a caveat proceeding is to determine whether the document purporting to be the will of a person is, in fact, their will.

The act provides that, during the pendency of a caveat proceeding:

- No assets may be distributed to any beneficiary of the estate.
- No commissions may be advanced or awarded to the personal representative.
- The personal representative is required to: (1) File all accountings required by the clerk of superior court, with any applicable filing fees associated with those accountings being payable from the assets of the estate; and (2) preserve the property of the estate, and pursue and prosecute claims that the estate may have against others.
- The personal representative may file all appropriate tax returns.
- The personal representative may pay the following expenses, if the personal representative has filed notice with the clerk of superior court, and has served notice upon all parties to the caveat: Taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; and professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

  If an objection to any of these payments is filed within 10 days of service, the clerk is required to schedule a hearing on the proposed payments. The parties to the caveat may consent to a payment, and the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

The act also provides that questions regarding the use, location, and disposition of assets that cannot be resolved by the parties must be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days' notice and must serve the notice upon all parties to the caveat. Decisions of the clerk may be appealed to the superior court.

This act became effective October 1, 2009, and applies to estates of decedents dying on or after that date. (JLM)

Increase Small Estate Amount

S.L. 2009-175 (HB 203) increases the cap on the size of estates that may be administered under the Small Estates provisions of the General Statutes (Article 25 of Chapter 28A). The total value of an estate that may be administered as a small estate is increased from $10,000 to $20,000, and surviving spouses will be eligible to collect property valued between $20,000 and $30,000 (was $10,000 to $20,000).

This act became effective October 1, 2009, and applies to estates of persons dying on or after that date. (BG)

Substitution of Trustees

S.L. 2009-176 (HB 794) addresses situations in which the name of a trustee is omitted from an instrument that appears on its face to be intended to be a deed of trust. In these cases, the act provides the following:

- The instrument will be deemed to be a deed of trust.
- The owner or owners executing the deed of trust and granting an interest in the real property will be deemed to be the constructive trustee for the secured party or parties (e.g., the lender) named in the instrument.
- A substitution of trustees may be undertaken.

To prevent fraudulent transfers, the act provides that a constructive trustee cannot take any of the following actions without the consent of those who own a majority amount of the obligations:

- Effect a substitution of trustees or the satisfaction of the deed of trust.
- Release any property or interest in the property from the lien of the deed of trust.
- Modify or amend the terms of the deed of trust.

The act clarifies that a substitute trustee succeeds the rights of the trustee and does not have the same limitations that a constructive trustee has.

This act became effective June 26, 2009, and applies to all instruments recorded before, on, or after that date. (BK)

Electronic Reporting of Abandoned Property

S.L. 2009-177 (HB 723) requires the holder of abandoned property with 50 or more owner records to file reports electronically in a format prescribed by the National Association of Unclaimed Property Administrators and approved by the State Treasurer. Reports must be filed with the State Treasurer and must include specific information set forth in the statute.

The act also provides that holders reporting less than 50 property owner records will be allowed, but not required, to file the report electronically. Any holder who files the report electronically also will be allowed to file electronically the signed affidavit stating that a good faith effort has been made to locate the apparent owner.

This act became effective October 1, 2009. (KCB)

Wills/Bequests to Drafting Attorney

S.L. 2009-182 (HB 1390) provides that an attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will. The act includes exceptions for attorneys who are relatives of the testator. An attorney who drafts a will or codicil will be required to include on the document the attorney's name and business address.

This act became effective January 1, 2010. (KCB)

Increase Spousal Year's Allowance/Conform Language

S.L. 2009-183 (HB 312) increases the allowance for the surviving spouse from the personal property of a deceased spouse from $10,000 to $20,000. It also makes conforming changes to other statutes that reference the amount of the spousal share.

This act became effective January 1, 2010, and applies to estates of individuals dying on or after that date. (JLM)

Housing Authorities/Moderate-Income Persons

S.L. 2009-218 (HB 1093) authorizes certain housing authorities to provide housing assistance for moderate income persons.

The term "moderate income" applies to persons deemed by the authority to require housing assistance on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the person's family, (iii) the cost and condition of housing facilities available, and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis.

The act applies only to the following:

- Housing authorities of all cities that have a population of less than 20,000 and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students.
- Housing authorities of all counties that have a population of less than 80,000 and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students.

The act was designed to assist persons of moderate income obtain housing in Boone and Watauga Counties.

This act became effective June 30, 2009. (BG)

Clarifications to Trust Code

S.L. 2009-222 (SB 482) amends the definition of a "beneficiary" of a trust to clarify that the term does not include permissible appointees under a power of appointment and makes other conforming changes.

This act became effective October 1, 2009. (BK)

Clarify Judicial Creation of Trust

S.L. 2009-267 (SB 483) amends the law that gives clerks of superior court jurisdiction over internal affairs of a trust, to clarify that creation of a trust is a proceeding over which clerks have jurisdiction. In addition, the act provides that a court may establish a trust by judgment, order, or decree in any matter properly before the court, including a trust for Medicaid purposes under section 1396p(d)(4) of Title 42 of the U.S. Code. The provision is not a limitation on a court's ability to otherwise create a trust under existing law.

This act became effective October 1, 2009. (JLM)

Unequal Shares/Joint Tenancy Survivorship

S.L. 2009-268 (HB 799) provides that interests in a joint tenancy with right of survivorship (JTROS) may be held in unequal shares if specifically provided for in the conveyance. A conveyance of an interest by a party to one or more parties as JTROS would create that interest if expressly provided in the instrument of conveyance, whether or not the conveyance was jointly with the grantor-party. The interest of the grantees in such a conveyance is deemed equal unless otherwise specified in the conveyance. A JTROS held by a husband and wife would be deemed a single tenancy by the entirely, and treated as a single party when determining interest in the JTROS, unless otherwise specified. If joint tenancy interests among three or more JTROS were held in unequal shares, upon the death of one joint tenant, the share of the deceased tenant would be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless otherwise provided in the creating instrument. The act also retroactively recognizes past conveyances of unequal

ownership interests in a JTROS prior to July 10, 2009, but would require that past distributions in equal amounts from a JTROS that sought to create unequal ownership shares remain valid and not be disturbed.

This act became effective July 10, 2009. (KG)

Allocate Water Cost/Landlord-Tenant Changes

S.L. 2009-279 (SB 661) makes various changes to laws governing landlord-tenant matters as follows:

- Authorizes a landlord to allocate the cost of providing water and sewer service to each tenant in apartment complexes and other multi-family housing units using equipment that measures hot water usage.
- Stays the execution of a judgment for summary ejectment while a motion for modification of the undertaking is pending.
- Amends the statute governing a landlord's responsibilities to provide fit premises for a tenant by requiring a landlord to repair or remedy, within a reasonable period of time, imminently dangerous conditions (as described in the act) of which the landlord has actual knowledge or has received notice. The landlord may recover the actual and reasonable costs of repairs for conditions that are the fault of the tenant.
- Authorizes several new fees that a landlord may charge a residential tenant, including a complaint-filing fee, a court-appearance fee, and a second trial fee.
- With regard to disposition of a tenant's security deposit upon termination of tenancy, in cases where the landlord's claim against the deposit cannot be determined within 30 days, the act requires that the landlord provide the tenant an interim accounting within 30 days and a final accounting within 60 days of termination of tenancy and delivery of possession.
- Amends the remedies available under the Tenant Security Deposit Act to provide that willful failure of a landlord to comply with the deposit, bond, or notice requirements of the Act would void the landlord's right to retain any portion of the tenant's security deposit.
- Clarifies the circumstances under which a city may order a dwelling to be vacated and closed as only those circumstances in which continued occupancy during the time allowed for repair would present a significant threat of bodily harm. The city may take into account the necessary repairs, alterations, or improvements, the current state of the property, and any additional risks due to the presence of minors or occupants with physical or mental disabilities.

This act became effective October 1, 2009. The provisions authorizing landlords to charge certain new fees and to allocate the cost of water and sewer service apply only to leases entered into on or after October 1, 2009. (JLM)

Update Funeral Expense Allowance/Estates

S.L. 2009-288 (SB 159) changes the treatment of funeral and burial expenses as claims against a deceased person's estate, and changes and clarifies the personal representative's authority to pay for a gravestone and burial place.

This act does the following:

- Amends the law concerning the order of payment for claims against the estate of a decedent by increasing the second class claim for funeral expenses from $2,500 to $3,500, and by providing that costs up to $1,500 for gravestone and burial places are third class claims. Moves the prior third class claims to fourth class and all claims below that down one level to the next lower class.

- Increases the amount that can be spent on a suitable gravestone without approval of the clerk of court from $400 to $1,500.
- Removes the two-tiered system, based on estate size, that now governs how much the clerk may allow the personal representative to spend on a gravestone. Instead, it leaves that to the discretion of the clerk, who "may consider the value of the estate."
- Clarifies that a personal representative may provide a suitable burial place for the decedent.

This act became effective October 1, 2009, and applies to estates of individuals dying on or after that date. (BG)

Assets of Ward's Estate

S.L. 2009-309 (SB 605) expands the types of accounts into which a ward's money can be deposited without being included in the value of the estate used in setting the amount of the guardian's bond. The act permits the ward's money to be deposited in any of the following:

- A bank.
- A savings and loan association.
- A credit union.
- A trust company.
- A registered securities broker or dealer.

The act provides that the exclusion from the calculation of the ward's estate applies only to money and not to securities deposited in these institutions. It also clarifies that the money may be deposited to a financial institution by general guardians or guardians of the estate.

This act became effective October 1, 2009. (BK)

Trustee's Power to Appoint to Other Trust

S.L. 2009-318 (SB 481) allows a trustee, under certain circumstances, to appoint trust property into another trust without the approval of a court. This authority is subject to specified restrictions.

The exercise of the power of appointment must be made in a written instrument, signed and acknowledged by the trustee and filed with the records of the first trust. The trustee must give the qualified beneficiaries 60 days' written notice before exercising the power. This notice requirement may be waived by all qualified beneficiaries.

This act became effective October 1, 2009, and applies to (i) all conveyances, devises, beneficiary designations, or other transfers occurring before, on, or after that date; (ii) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date unless the court finds that application of a particular provision of the act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2009, will apply. (KG)

Partition Sales/Extend Report & Answer Times

S.L. 2009-362 (HB 581) extends from 60 to 90 days the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land. It also extends from 10 to 30 days the deadline for responding to a summons in a partition action. The act creates G.S. 46-2.1 (Summons) which requires that the petition include written notice and provides that the law that makes the respondent aware of his or her right to seek the advice of counsel, allows a court to order attorneys' fees be paid as part of the cost of the proceeding. It clarifies that an entry of judgment becomes final and effective either 15 days after entry or when

the clerk denies a petition for revocation, whichever occurs later, and provides that the order confirming the sale may be appealed within 10 days of the order becoming final and effective.

This act became effective October 1, 2009. (KG)

Revise Elective Share Statutes

S.L. 2009-368 (HB 765) rewrites Article 1A of Chapter 30 of the General Statutes governing a surviving spouse's elective share. The following is an overview of the changes to the various statutory sections.

- G.S. 30-3.1 (Right to Elective Share) is amended to allow for the consideration of lineal descendants whether or not those descendants are the children of a prior marriage.
- G.S. 30-3.2 (Definitions) is revised to include computational language or calculations where appropriate. New definitions include:
  - "Claims" – This definition lists the types of liabilities that are considered a claim against a decedent's estate and exempts from claims: (1) a claim for equitable distribution awarded subsequent to the decedent's death; (2) death taxes; and (3) claims not supported by adequate consideration.
  - "Total Assets" – The language primarily is a calculation or computation to determine the elective share and divides property into the following categories: Property that would pass by intestate succession; property over which the decedent held a general power of appointment including property held in revocable trusts, or a trust in which the decedent had the power to withdraw property, bank accounts, and stocks; property held by joint tenancy; beneficiary property including life insurance, death benefits, annuities, IRAs, pensions, and retirement plans; irrevocable transfers to the extent the decedent retained possession or enjoyment or income from the property; property transferred with and to the extent of a power that could be exercised by the decedent with someone else; and gifts made one year preceding death.
  - "Total Net Assets" – Total assets less funeral expenses, administration expenses, and claims.
- G.S. 30-3.3A (Valuation of Property) is amended to provide that the value of the property will be the fair market value at the time of death except for: (1) Gifts made to persons other than the surviving spouse; and (2) gifts made to the surviving spouse that are not held in trust, not life insurance, or other form of ownership that passes to the surviving spouse on the decedent's death. For these transfers, the value is determined as of the date of transfer, unless the property is disposed of and the donee proves that the value prior to death is less than the value on the date of transfer. For joint property with right of survivorship, no discount is taken to reflect the decedent's partial interest. For property subject to power of appointment, value must be for the property subject to the power only. For transfers with a sole or shared retained right of possession or enjoyment, values must be only for the property subject to the power. For partial or contingent property interests commencing or terminating on the death of one or more persons, value is based on the statutory mortality and annuity tables. The act also provides that the method for determining fair market value can be by good faith agreement of, as applicable: (1) The surviving spouse and the personal representative for property passing by intestacy; (2) in the case of a trust, the personal representative, surviving spouse, and trustee; or (3) the personal representative, surviving spouse, and the responsible person, for property held by a responsible person. If an agreement cannot be reached, the parties may present evidence to the clerk, who must determine the fair market value.

- G.S. 30-3.4 (Procedure for determining the elective share) is amended to add language to (1) require a power of attorney to authorize the attorney-in-fact specifically to exercise the right to file for an elective share or to engage in estate transactions, and (2) to require a general guardian or guardian of the estate to obtain court approval before filing for an elective share. The act repeals a provision that required the preparation of a tax return within two months of filing a petition for elective share. This language is deleted, because some estates or property within the estate are not taxable. The act adds language authorizing the clerk to order mediation of disputes in connection with elective share claims and adds language authorizing appeal of an elective share claim as an estate matter under G.S.1-301.3. Under G.S. 1-301.3, a superior court judge may consider only whether the findings of fact are supported by the evidence, whether the conclusions of law are supported by the findings of fact, and whether the order is consistent with the conclusions of law and applicable law.
- G.S. 30-3.5 (Satisfaction of elective share) is amended to provide that the personal representative apportion each responsible person's liability to the surviving spouse by multiplying the value of the elective share by a fraction comprised of the value of the responsible person's non-spousal assets over the total value of all non-spousal assets. The personal representative must pay the elective share using first the non-spousal assets in the decedent's residuary estate. If these are insufficient, each responsible person's share is reduced proportionately. The responsible person may satisfy its liability by any of the following methods: (1) Conveying back that portion of non-spousal assets valued on the date of conveyance or, if the value is less than the party's liability, the conveyance of all the non-spousal assets; (2) payment in cash; (3) payment in other property upon written agreement; or (4) any combination of the above. The personal representative may petition the court for the recovery from the responsible person. If the personal representative cannot recover from a responsible person, then the responsible person's liability may be apportioned among the remaining responsible persons. The non-defaulting responsible person or persons are then entitled to recover from the defaulting responsible person. A responsible person's liability may not exceed their proportionate share of the non-spousal assets. A responsible person violating a standstill order prohibiting disposal of a decedent's total net assets may be held in civil contempt. When a responsible person or transferee must post a bond, it is to secure payment not only of the elective share, but of any apportioned expenses.
- G.S. 30-3.6 (Waiver of rights) is amended to require a power of attorney specifically to authorize the attorney-in-fact to waive the right to claim an elective share or to engage in estate transactions and also requires a general guardian or guardian of the estate to obtain court approval before doing so.

This act became effective July 27, 2009, and applies to decedents dying on or after October 1, 2009. (KG)

Amend State Fair Housing Act

S.L. 2009-388 (SB 465) amends the State Fair Housing Act by removing from three existing housing discrimination prohibitions the qualification that, to be prohibited, the acts must be done: (i) In a real estate transaction, and (ii) because of a person's race, color, religion, sex, national origin, handicapping condition, or familial status.

The three discriminatory practices affected are the following:

- Refusal to permit reasonable modifications of existing premises that are necessary to the handicapped person's full enjoyment of the premises, at the expense of the handicapped person.

- Refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary for a handicapped person's equal use and enjoyment of a dwelling.
- Failure to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, that have at least one building entrance on an accessible route, or even with an accessible entrance do not meet specified criteria (public use portions are readily accessible; all dwellings and units have an accessible route through them; doors are wide enough for wheelchairs; light switches, outlets, etc. are accessible; bathroom walls are reinforced for grab bars; and kitchens and bathrooms allow wheelchair maneuvering).

This act became effective October 1, 2009. (KCB)

Increase Statutory Homestead Exemption

S.L. 2009-417 (HB 1058) makes the following changes to the homestead exemption statute:

- Increases from $18,500 to $35,000 the amount a debtor may retain free of the enforcement of claims of creditors an interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence.
- Increases from $37,000 to $60,000 the amount that an unmarried debtor who is 65 years of age or older may retain in an aggregate interest in the property so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

This act became effective December 1, 2009. (BK)

Condemnation of Conservation Easements

S.L. 2009-439 (SB 600). See **Environment and Natural Resources**.

Abolish Certain Deficiency Judgments

S.L. 2009-441 (HB 1057) abolishes the ability of a mortgagee or trustee to obtain a deficiency judgment in the sale of real property secured by a borrower's primary residence, if the defaulted mortgage loan was a rate-spread home loan or a nontraditional mortgage loan. For mortgages or deeds of trust recorded before January 1, 2010, the act abolishes deficiency judgments in foreclosures of a borrower's principal dwelling commenced under a power of sale clause contained in the mortgage or deed of trust. For mortgages or deeds of trust recorded on or after January 1, 2010, the act abolishes deficiency judgments in foreclosures of a borrower's principal dwelling commenced under a power of sale clause contained in the mortgage or deed of trust, as well as to judicial foreclosures.

The act also provides: (1) That a court, in its discretion, may award reasonable attorneys' fees to a borrower that successfully defends against a deficiency judgment brought in violation of the act's provisions; and (2) exemptions from applicability for several types of loans.

This act became effective October 1, 2009, and applies to actions filed on or after that date. (JLM)

Notice to Creditors Without Estate Administration

S.L. 2009-444 (SB 606) creates a new procedure for providing notice to creditors in estates that are not subject to probate, by authorizing the appointment of a limited personal representative without estate administration. The act applies to a decedent who dies testate

(with a will) or intestate (without a will) and leaves no property subject to probate. The procedure is not available if the decedent has a will providing that the procedure is not available. The act also does the following:

- Allows any person otherwise qualified to serve as a personal representative of the estate or as a trustee under the terms of a revocable trust created by the decedent, to file a petition to be appointed as a limited personal representative. The limited personal representative may provide notice to creditors without the administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death.
- Provides that a person applying to be a limited personal representative must submit a sworn affidavit to the clerk of superior court and submit a fee of $20.
- Provides that upon qualification and appointment, the limited personal representative is to provide notice to all persons, firms, and corporations having claims against the decedent and file proof of the notice with the clerk.
- Provides that in accordance with the existing procedures and statutory priorities:
  - Creditors of the decedent must present claims.
  - Creditors failing to file such claims must be barred.
  - The limited personal representative must administer claims presented.
- Provides that nothing precludes any person qualified to serve as personal representative, including a limited personal representative, from petitioning the clerk for the appointment of a personal representative to administer the decedent's estate.
- Requires a limited personal representative to file a sworn affidavit or report listing all of the debts and claims that have been presented, including proof that the claims either have been satisfied, compromised, or denied and that the time for filing suit has expired. The affidavit or report must be filed within 30 days of the later of the following:
  - The date by which a claim must be presented as set forth in the general notice to creditors.
  - The date by which an action for recovery of a rejected claim must be commenced.
- Upon filing, the clerk of superior court must review and record the affidavit or report.
- After the clerk has reviewed the report, the clerk must take one of the following actions:
  - Discharge the limited personal representative from office.
  - Require the filing of any additional information or documents determined by the clerk to be necessary to the understanding of the affidavit or report.
  - Order the full administration of the decedent's estate and appoint a personal representative.

This act became effective October 1, 2009, and applies to estates of persons dying on or after that date. (BK)

Partition Sales/Commrs., Sellers, Buyers

S.L. 2009-512 (HB 578) makes a number of changes to real property partition proceedings. The act requires that notice to unknown parties to a partition proceeding by publication include a full description of the property, and requires the court to appoint someone to represent any unknown or unlocatable parties. The act modifies the circumstances under which a court may order a sale of the property. In determining whether "substantial injury" would occur, the court must consider both of the following:

- Whether the fair market value of each cotenant's share in an actual division of the property would be materially less than the amount each cotenant would receive from a sale of the whole.

- Whether an actual division would result in material impairment of any cotenant's rights.

The court may, in its discretion, consider the remedy of owelty if it would aid in making an in-kind partition without substantial injury to the parties. Owelty is a sum of money that is paid by one party in a partition to another party when the land cannot be equitably divided.

The act makes it clear that interested parties may enter into mediation to resolve the dispute prior to filing an action and that the clerk or the court may require the parties to attempt to mediate a settlement prior to ordering a sale. The act also provides that any cotenant making an offer to purchase the entire parcel will receive credit for the value of his or her share and receive a corresponding reduction in the amount owed after deducting the costs and fees associated with the sale. Two or more cotenants may aggregate the credit for their interests.

Finally, the act amends the law pertaining to a petition for revocation of an order confirming the partition sale of real property by requiring the court to order an independent appraisal of the property upon request of the petitioner. If, based on the appraisal and other evidence, the court finds the sale price to be inadequate the court may revoke the order confirming the sale. The cost of the appraisal would be apportioned to all parties requesting it, and the court may require the parties to pay all or part of that cost prior to the appraisal.

This act became effective October 1, 2009, and applies to partition actions filed on or after that date. (KG)

Notice on Liens for HOA Assessments

S.L. 2009-515 (HB 806) amends the North Carolina Planned Community Act and the North Carolina Condominium Act to improve the notice that must be given to homeowners when a homeowner's association (HOA) files a claim of lien against the property for unpaid assessments. The act requires that an association make efforts to ensure that it has the homeowner's current mailing address prior to filing a claim of lien and that it mail a statement of assessment to the owner's mailing address no less than 15 days prior to filing the lien. The act also requires that the claim of lien contain a conspicuous warning of the consequences of failure to pay the lien, including a statement that failure to pay the assessment may result in foreclosure against the property. The person signing the claim of lien on behalf of the association must attach to and file with the lien a certificate attesting to the attempt of service on the record owner in accordance with the Rules of Civil Procedure. If actual service is not achieved, the association must be deemed to have met the requirements set out for service if it has attempted service under the Rules of Civil Procedure and if it mails a copy of the lien to the physical address of the lot and the lot owner's address of record. If the lot owner's record address is different from the physical address of the property, the association must mail to the address of the lot owner shown on the county tax records and the real property records for the lot.

This act became effective October 1, 2009. (KCB)

Chapter 20
Resolutions

Denise Huntley Adams (DHA)

Joint Resolutions

NAACP's 100th Anniversary

Res. 2009-1 (SJR 162).

Weldon Rockfish Capital of the World

Res. 2009-2 (SJR 110).

Invite Governor

Res. 2009-3 (HJR 363).

Honor Fuquay-Varina's Centennial

Res. 2009-4 (SJR 435).

Honor Roger Bone

Res. 2009-5 (SJR 146).

Utilities Commission Confirmation

Res. 2009-6 (SJR 90).

Honor John Brown

Res. 2009-7 (HJR 53).

Wake Forest's 100th Anniversary

Res. 2009-8 (HJR 233).

Honor Kay Yow

Res. 2009-9 (HJR 303).

State Bd. of Community College Elections

Res. 2009-10 (HJR 485).

Honor Horace Kephart/Great Smoky Mountains

Res. 2009-11 (HJR 637).

Honor Beaufort's 300th Anniversary

Res. 2009-12 (SJR 1097).

Honor Wade Edward Brown

Res. 2009-13 (SJR 1098).

Honor Chief Roscoe Jacobs, Sr.

Res. 2009-14 (HJR 343).

Honor Theodore Kinney

Res. 2009-15 (HJR 224).

Honor Jim Long

Res. 2009-16 (SJR 376).

Honor Hertford County's 250th Anniversary

Res. 2009-17 (SJR 1099).

Joint Session for State Board of Elections Confirmations

Res. 2009-18 (HJR 365).

House of Flags Museum

Res. 2009-19 (HJR 383).

Honor Jesse Helms

Res. 2009-20 (SJR 1103).

High Point Furniture Market

Res. 2009-21 (HJR 1538).

Utilities Commission Confirmation

Res. 2009-22 (SJR 1101).

Blue Ridge Parkway 75th Anniversary

Res. 2009-23 (HJR 1655).

Honor Halifax County's 250th Anniversary

Res. 2009-24 (SJR 1104).

Honor William Oliver Swofford

Res. 2009-25 (HJR 1653).

Honor Vernon Malone

Res. 2009-26 (SJR 1106).

State Board of Elections Confirmations

Res. 2009-27 (HJR 364).

4-H Program 100th Anniversary

Res. 2009-28 (SJR 1108).

Honor Eugene Turner

Res. 2009-29 (HJR 1657).

Honoring Fallen Soldiers

Res. 2009-30 (HJR 1652).

Honor Tar Heels on National Championship

Res. 2009-31 (HJR 1517).

Honor UNC Basketball Team

Res. 2009-32 (SJR 1100).

Adjournment Resolution

Res. 2009-33 (SJR 1109).

Chapter 21
Retirement

Karen Cochrane-Brown (KCB), Theresa Matula (TM)

Enacted Legislation

Clarify Definition of Retirement

S.L. 2009-11 (HB 94) amends the definition of the term "retirement" to clarify that service as an unpaid bona fide volunteer in a public school is not considered service for purposes of the Teachers' and State Employees' Retirement System. G.S. 135-1(20) defines "retirement" as the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. The definition also specifies that a retirement allowance under the provisions of Chapter 135 may be granted only upon retirement of a member and that in order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement.

This act became effective March 26, 2009. (KCB)

Retirement Technical Corrections

S.L. 2009-66 (HB 642) makes technical corrections and other changes to the statutes governing the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, the Local Governmental Employees' Retirement System, and the Firemen's and Rescue Squad Workers' Pension Fund. The act includes the following changes:

- Allows for non-spouse beneficiary rollovers from the State, Judicial, Local and Legislative Systems to an Individual Retirement Account.
- Provides guidance for State and Local Retirement Systems regarding the payment of benefits if a member dies (i) after the effective date of retirement, (ii) following receipt by the Board of Trustees of an election of benefits form and (iii) before the first benefit check is cashed. In these cases, the retirement benefit is payable in accordance with the member's election of option.
- Provides guidance for State and Local Retirement Systems regarding the payment of benefits when the member dies after the effective date of retirement but prior to completion of the election of benefits form. If an election of benefits has not been made and only one beneficiary has been named, then that beneficiary may select the retirement option. If more than one beneficiary has been named, then the administrator of the estate may make the election.
- Makes changes related to the Uniformed Services Employment and Reemployment Rights Act, P.L. 103-353, to give more rights to members called into military service in the Reserves or National Guard while serving as an active State or local government employee.
- Changes an omitted salary calculation in the State and Local Retirement Systems to apply to beneficiaries, not just members.
- Changes the Return-to-Work statutory provision requiring employers in the State and Local Retirement Systems to report information on rehired retirees, along with the nature of their reemployment and the amount of compensation. It also provides a time frame for reporting this information with penalties assessed if requirements are not met.

- Changes the State Retirement System to provide a 100% joint and survivor payment like its counterpart in the Local Retirement System.
- Changes the National Guard Pension Fund death procedure to give retirees a retirement check in the month of their death, consistent with all the other retirement systems.
- Allows members to change beneficiaries on-line. Electronic submission is available only to those with less than 10 years of service to reduce fraud for more substantial accounts and older individuals.

This act became effective July 1, 2009. (KCB)

State Treasurer Investments

S.L. 2009-98 (SB 703). See **Finance**.

Amend Survivor's Alternate Benefit

S.L. 2009-109 (SB 411) amends the laws governing the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to allow the beneficiary of a law enforcement officer who had at least 15 years of service and who was killed in the line of duty to elect the survivor's alternate benefit.

Prior to this act, when a member of the State or Local Retirement System died in service, the member's primary beneficiary was entitled to choose to receive a survivor's alternate benefit in lieu of a return of the member's accumulated contributions. The survivor's alternate benefit is determined by computing the amount the beneficiary would have received if the member had retired and selected a joint and survivor option to provide for the continuation of the member's reduced retirement allowance throughout the life of the beneficiary. In order to receive the benefit, one of the following must apply:

- The member was eligible to retire and receive a full or early retirement allowance.
- The member had 20 years of creditable service, but was not yet 50 years of age, and therefore not eligible for early retirement, in which case, the benefit is computed based on the early retirement formula.
- The member had not yet begun to receive a retirement allowance.

There was previously no provision for the beneficiary of a member who died with less than 20 years of service to receive the survivor's alternate benefit.

The act amends the law to provide that in the case of a law enforcement officer who dies in the line of duty having obtained 15 years of service, the officer's beneficiary is entitled to select the survivor's alternate benefit. The benefit is computed based on the early retirement formula.

This act became effective June 16, 2009, and applies to beneficiaries of law enforcement officers killed in the line of duty on and after January 1, 2007. (KCB)

Retired Nurses Return to Work

S.L. 2009-137 (SB 204) provides that the computation of postretirement earnings of a Teachers' and State Employees' Retirement System (TSERS) beneficiary meeting the criteria below will not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds 50% of the applicable workweek as a nursing instructor. This employment must be in a certified nursing program and for a maximum of three years. The exemption from the earnings restriction would require that the retiree:

- Retired on or before June 1, 2009, regardless of age or years of creditable service; or
- Retires on or after July 1, 2009, after attaining

- The age of at least 65 with five years of creditable service; or
- The age of at least 60 with 25 years of creditable service; or
- 30 years of service;

and

- Has been retired at least six months and has not been employed in any capacity with a State-supported community college or a State-supported university for at least six months immediately preceding the effective date of reemployment.

The act requires the North Carolina Community College System and The University of North Carolina to certify to the TSERS that a beneficiary is employed as a nursing instructor with a State-supported community college or a State-supported university. This certification process includes a requirement that in order for a retired nursing instructor to be rehired, the community college or university must certify to the TSERS that it has a shortage of qualified nursing instructors by doing all of the following:

- Making a good faith effort to fill positions with qualified nursing instructors who are not retirees.
- Posting the vacancy or vacancies for at least two months.
- Soliciting applications through local newspapers, other media, and nursing education programs.
- Determining that there is an insufficient number of eligible applicants for the advertised position or positions.

The act also requires that, effective July 1, 2009, each community college or university employing a retired nursing instructor must pay to the TSERS a Reemployed Nurse Contribution Rate of 11.70% of covered salaries being paid to the retired nursing instructors who are exempt from the earnings cap. Additionally, each community college or university must report monthly to the Retirement Systems Division on payments made as a result of this requirement.

The act requires that by January 1, 2011, the North Carolina Community College System provide a written report to the General Assembly on whether the reemployment of retired nursing instructors is effectively addressing the shortage of qualified nursing instructors.

This act became effective July 1, 2009, and expires June 30, 2013. (TM)

Tax Info Disclosure to State Treasurer

S.L. 2009-283 (SB 691). See **Finance**.

Fire and Rescue Pension Withdrawal Change

S.L. 2009-365 (HB 1073) allows a member of the Fire and Rescue Pension Fund with five or more years of contributing service and who withdraws from the fund to receive all the contributions made by or on behalf of the member, less a $25 administrative fee. Fire and Rescue Pension Fund members with less than five years of contributing service and who withdraw from the fund will receive money that the individual contributed to the fund, but money contributed on behalf of the member will be returned to the entity that made the contribution, less a $25 administrative fee.

This act became effective July 27, 2009. (TM)

Modify Supplemental Retirement Board/Local Governmental Employee Furloughs

S.L. 2009-378 (SB 658) modifies the membership of the Supplemental Retirement Board of Trustees.

Membership of the Supplemental Retirement Board. – The act modifies the membership of the Supplemental Retirement Board of Trustees to direct that one of the six

members appointed by the Governor who has experience in finance and investments must be a retired state or local governmental employee.

Local Governmental Employee Furlough. – The act provides that a public employee who is a member of the Local Governmental Employees' Retirement System and who is furloughed must be considered to be in active service and entitled to the same benefits to which the employee was entitled on the day before the furlough commenced. The employer who opts for this provision is required to pay both the employer and employee contributions on behalf of the furloughed employee. This provision is similar to the one enacted for State employees in S.L. 2009-29 (HB 917).

The portion of this act that pertains to local governmental employee furloughs became effective July 31, 2009, and applies to local government furloughs on and after January 1, 2009, and before July 1, 2010. The remainder of the act became effective July 1, 2009. (KCB)

Purchase Service/Certain Employment

S.L. 2009-392 (SB 863) amends the law governing the Local Governmental Employees' Retirement System to allow a member who has completed at least five years of membership service to purchase creditable service for periods of nonqualified employment with an economic development organization that receives at least 50% of its funding from local government. The member may purchase a maximum of five years of such service.

The member must obtain written verification of the service from the nonprofit corporation. The member also must pay the full liability of the credit as determined by the Board of Trustees upon the advice of the actuary. The full liability includes an administrative fee and assumes postretirement allowance increases from the earliest age at which a member could retire on an unreduced service allowance.

This act became effective July 1, 2009, and applies to nonqualified employment with an economic development organization performed on or before December 31, 2009. The act expires December 31, 2009, provided that any inchoate rights that may accrue to a member under this act must not be diminished. (KCB)

Clarify Local Special Separation Allowance

S.L. 2009-396 (HB 816) rewrites the law relating to the special separation allowance for local law enforcement officers to mirror the provisions of the law related to state officers with regard to the benefit, and the age and service requirements necessary to qualify for the benefit.

In addition, the act authorizes a local government employer to employ a retired officer in a public safety position in a capacity not requiring participation in the Local Retirement System. The benefit is not subject to any increases in salary or retirement allowance. The head of the local employer determines eligibility for the benefit and makes payment from available funds.

The act further clarifies that nothing in the act can be deemed to:

- Entitle an officer to retroactive payments for any period prior to the effective date that the employer previously determined that the officer was not entitled.
- Prospectively deny payments of an annual separation allowance to an officer whose employer previously determined that the officer was eligible for the benefit.
- Apply to any pending litigation.
- Extend payment beyond the date when it would ordinarily cease under this act.

This act became effective July 31, 2009, and applies prospectively to payments required by the act whether the officer retired before, on, or after the effective date of this act. (KCB)

Extend Phased Retirement Program Exemption

S.L. 2009-451, Sec. 26.21 (SB 202, Sec. 26.21) provides that changes made in 2005 to the definition of "retirement" for the Teachers' and State Employees' Retirement System, do not apply to participants in The University of North Carolina Phased Retirement program until the earlier of August 31, 2013, (previously June 30, 2010), or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service.

This section became effective July 1, 2009. (TM)

Fire and Rescue Pension Fund Additions

S.L. 2009-567 (HB 1160) allows a member of the Firemen's and Rescue Squad Workers' Pension Fund to receive credit for that service upon making a lump sum payment of $10 for each month of service not credited, if the member:

- Was employed by the Asheville Regional Airport Fire Department on April 1, 2005; and
- Not received credit for periods of service with the Firemen's and Rescue Squad Workers' Pension Fund since that time.

The act also allows employees of the Asheville Regional Airport Fire Department who meet the criteria outlined in this act to continue as members of the Firemen's and Rescue Squad Workers' Pension Fund.

This act became effective August 28, 2009, and applies only to those employees of the Asheville Regional Airport Fire Department who were employed on or before April 1, 2005, and remain continuously employed by the Asheville Regional Airport Fire Department. (TM)

Registers of Deeds' Pension

S.L. 2009-576 (SB 133) amends the law to adjust the limit on the monthly pension payable to an eligible retired register of deeds. The monthly pension must not exceed an amount which, when added to a retirement allowance at retirement from the Local Governmental Employees' Retirement System, or an equivalent locally sponsored plan, is greater than 75% of a register of deed's equivalent annual salary immediately preceding retirement.

The limitation on monthly pension payments does not apply to any retiree or current active member of the Fund.

This act became effective August 6, 2009. (KCB)

Chapter 22
State Government

Barbara Riley (BR), Karen Cochrane-Brown (KCB), Erika Churchill (EC), Kory Goldsmith (KG), Theresa Matula (TM), Hal Pell (HP), Ben Popkin (BP), Denise Huntley Adams(DHA)

Enacted Legislation

Federal Reservation Statute

S.L. 2009-20 (HB 613) provides that the State does not cede exclusive jurisdiction to the United States over certain described lands which the federal government might acquire from the State. The United States Constitution provides that if a state legislature consents to a federal acquisition of land within the state, then the federal government obtains exclusive jurisdiction over the land acquired. A state may qualify its consent or cession by reservations consistent with the governmental purposes for which the property was acquired, and retain partial jurisdiction. If a state does not consent to federal acquisition or cession of jurisdiction, the federal government retains the power to acquire land within a state and also may enact rules and regulations which would override conflicting State rules or regulations.

The act provides that the State does not consent to or cede exclusive jurisdiction to the federal government's acquisition of land that meets all of the following:

- Is in a county where there is no existing military base at which aircraft squadrons are stationed.
- Is intended to be the site of an outlying landing field to support training and operations of aircraft squadrons.
- Is to be used by aircraft squadrons stationed at, or transient to military bases or stations located outside the State.

The State retains all its own sovereign rights, including the enforcement of criminal laws, public health and environmental laws, and conservation of natural resources. The State retains the legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property. The State also retains the right to tax privately-owned leasehold interests, improvements, and personal property.

If Congress has conferred authority on the agency controlling the acquired land to enact rules and regulations, conflicting State rules are overridden. However, the agency may be challenged as to what specific congressional enactments conferred the authority to it to establish the rules and regulations in question. The question of what authority Congress has conferred on the agency will be an issue only once a dispute arises. However, if a challenge is made, the agency must be able to identify a source of authority for its enactment of overriding rules or regulations.

This act became effective April 30, 2009. (HP)

Stipulation for Final Decision by OAH

S.L. 2009-51 (SB 633) amends the Administrative Procedure Act to allow an administrative law judge to make a final decision in a contested case when the disposition of the case has been agreed upon by the parties. Currently, certain decisions of an administrative law judge can be directly appealed to the superior court, without being returned to an agency for final decision, including:

- A determination that the Office of Administrative Hearings lacks jurisdiction.
- An order following a hearing on the merits of an Equal Employment Opportunity Commission claim which has been deferred to the State.
- An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.
- An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

This act adds to the list an order entered when, by stipulation or waiver, the parties confer final decision authority on the administrative law judge.

This act became effective June 1, 2009, and applies to contested cases commenced on or after that date. (KCB)

Exempt Churches and Clubs Limited Use/Limited Access Elevators

S.L. 2009-79 (SB 114) adds a new provision to the North Carolina State Building Code (Code), to exempt from the Code the installation and maintenance of limited use or limited access hydraulic elevators in private clubs or establishments exempted from coverage under Title II of the Civil Rights Act of 1964 or in religious organizations or entities controlled by religious organizations, including places of worship. A nonreligious entity that leases space from a religious organization is not exempt. This tracks the federal ADA exemption provisions.

The act requires the Commissioner of Labor to adopt rules that require buildings that have more than one elevator to post a number in the elevator. The number identifies the elevator in case of malfunction of the elevator, in order to help extricate passengers.

This act became effective June 11, 2009. (KCB)

Auditor Ex Officio Duties

S.L. 2009-136 (SB 484) removes the State Auditor from the information technology services dispute panel and provides that the State Treasurer, or her designee (rather than the State Auditor or the Auditor's designee), in conjunction with the State Controller and the State Budget Officer, will handle the resolution of fee disputes between the Office of Information Technology Services and State agencies receiving services from that office. The State Treasurer is required to adopt rules for the dispute resolution process.

The act also removes the State Auditor as the appointing authority for one of the 13 members of the Liability Insurance Trust Fund Council.

This act became effective June 8, 2009. (EC)

Changes for Bonds Authorized Under the American Recovery and Reinvestment Tax Act

S.L. 2009-140, (SB 754). See **Finance**.

Use of Cisterns in Construction/Renovation

S.L. 2009-243 (HB 749) authorizes the State Building Code Council to adopt rules regarding the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and outdoor irrigation. The act prohibits any State, county, or local building code or regulation from banning the use of

cisterns to provide for the specified purposes. A cistern is defined as a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands.

The act also amends statutes regarding the certification by the Secretary of Administration of historically underutilized businesses (HUBs). The act provides that only businesses certified in accordance with G.S. 143-48.4 shall be considered by State departments and agencies as HUBs for minority business participation.

This act became effective June 30, 2009, and applies to any cistern installed on or after that date that is used to provide water for flushing toilets or for outdoor irrigation. (BR)

Building Code/Exempt Equestrian Arenas

S.L. 2009-245 (HB 780) does the following:

- Amends the State Building Code to clarify that the term "farm buildings" includes structures that are used for equine activities and are exempt from the building rules if located outside of a municipality. Equine activities include the care, management, boarding, or training of horses, or instruction and training of riders. Any building or structure associated with equine activities, including those used to store equipment or food, are included. However, a farm building outside a municipality's building rules jurisdiction that is used for equine activities loses its exempt status if it is used for spectator events, and more than ten people are present.
- Provides that if a mandatory evacuation of an area is ordered by State or local authorities, the tenant of a vacation rental is entitled to a prorated refund from the landlord not just of rent, but also of taxes and any other payments made by the tenant pursuant to the vacation rental agreement.
- Makes changes to the current law governing the cost of insurance offered by a landlord to insure the tenant against loss resulting from an evacuation. Any insurance offered by the landlord insuring the tenant against loss of use resulting from an evacuation may not exceed 8% of the total amount charged for the rental less the amount paid for a security deposit.

This act became effective June 25, 2009. (HP)

State Maintenance Vehicles-Parking Capitol

S.L. 2009-262 (HB 1453) allows maintenance vehicles of the Department of Administration's General Services Division to park without charge in metered spaces on the streets bordering Capitol Square when performing work at or on the Square. The vehicles would be prohibited from parking on the Square so as to obstruct the view of or access to monuments, unless the vehicle itself is needed to do maintenance required by law.

This act became effective July 10, 2009. (BR)

People First

S.L. 2009-264 (SB 208) directs the Legislative Services Office to incorporate into training of legislative drafters the preference to avoid language that implies a person as a whole is disabled, that equates a person with his or her condition, or that is regarded as derogatory or demeaning, and directs the Arc of North Carolina to provide a list of nationally-recognized descriptors to the Legislative Services Office for use in this training. The act also directs the General Statutes Commission to recommend to the 2010 session of the 2009 General Assembly and to the 2011 Regular Session of the General Assembly any statutory changes and drafting

policies needed to make the General Statutes and administrative rules refer to a person with a disability as a person first.

This act became effective July 10, 2009. (BP)

Make General Statutes Gender Neutral

S.L. 2009-273 (SB 870) directs the General Statutes Commission to study and recommend to the 2010 session of the 2009 General Assembly and to the 2011 Regular Session of the General Assembly ways to make the General Statutes and the North Carolina Constitution gender neutral. Recommendations may include both legislative changes and a process to be authorized by the General Assembly to enable the Attorney General to take administrative action to make the General Statutes gender neutral.

This act became effective July 10, 2009. (BP)

Property Finders

S.L. 2009-312 (SB 1021) amends the Abandoned Property law to regulate agreements to locate property by setting specific criteria for types of finder agreements that are enforceable. The act provides that an agreement is enforceable only if it:

- Is in writing and clearly sets forth the nature of the property and the services to be rendered.
- Is signed by the owner with the signature notarized.
- States the value of the property before and after deduction of the fee.
- States that there may be other claims to the property that may reduce the share of the owner.
- Describes the property, including the type of property, the Treasurer's property ID number, and the name of the holder.
- States clearly the fees and costs of services, which shall not exceed the lesser of $1,000 or 20% of the value of the property recovered. If the finder agreement is with heirs, the limit is 20% of the value, regardless of the amount.
- Discloses that the property is being held by the State Treasurer.

The act also streamlines the process for delivering the list of owners to the clerks of court through the Administrative Office of the Courts. It allows clerks of court and other public offices holding unclaimed property to keep it confidential until the property is transferred to the State Treasurer. Agreements subject to this act include power of attorney agreements and agreements to sell or release interest in property that is presumed abandoned. The act voids finder agreements made between the time the property is distributable to the owner, regardless of where held, and 24 months after it is delivered to the State Treasurer as "presumed abandoned."

The act removes the provision relating to the unenforceability of "unconscionable" fees. It also provides that anyone entering into an agreement with the owner may receive cash property, but not tangible property or securities on behalf of the owner. Failure to comply with the act is an unfair and deceptive trade practice.

This act became effective October 1, 2009, and applies to agreements entered into on or after that date. (KCB)

Design Professional Seals / Public Records

S.L. 2009-346 (HB 1478) makes the image of the seal of a licensed design professional that appears on building inspection documents submitted electronically to a county or municipality confidential and not a public record.

This act became effective October 1, 2009. (KG)

Notice of Special/Emergency Meetings

S.L. 2009-350 (HB 81) makes the following changes to G.S. 143-318.12, Public Notice of Official Meetings:

- Requires that any public body with a Web site publish notice of regular meetings on that Web site. This posting is in addition to other required notices.
- Requires that any public body maintaining its own Web site publish notice of special and emergency meetings.
- Requires that notice of official meetings required to be posted on the principal bulletin board or door of the usual meeting room, be posted on the door of the building or on the building in an area accessible to the public if the building is closed during the 48 hours prior to the meeting.
- Allows for e-mails in lieu of written mail sent by the U.S. Post Office or other method of delivery.
- Prohibits fees for notices given by e-mail.
- Allows entities filing a written request for notice of official meetings, including emergency meetings, to be given notice by e-mail.
- Clarifies the application of provisions relating to emergency meetings.

This act became effective October 1, 2009, and applies to open meetings noticed on or after that date. (BR)

Lottery Act Changes

S.L. 2009-357 (HB 205) makes the following changes to the North Carolina Lottery Act:

- Changes the term "vendor" to "potential contractor" throughout the Chapter, but maintains the same meaning for the term.
- Adds a definition for "lottery supplier" to differentiate between a contractor who provides goods and services on an ongoing basis and a person from whom the Commission makes an individual purchase with no long-term contractual obligations. Background checks will not be required for lottery suppliers.
- Specifies that the only information about a lottery winner that is considered a public record is the person's name, city and state of residence, game played, amount won, and date won.
- Clarifies that the prize remaining unpaid at the time of the prize winner's death may be paid to the estate or the trustee of a trust established by the prize winner or as designated by the prize winner in a prepared legal instrument. The trust document or instrument should be filed with the Director prior to the death of the winner.
- Clarifies the process of the debt set-off program and authorizes the Commission and the Department of Revenue to share information to the extent necessary to implement the debt set-off program.
- Amends provisions dealing with the compensation of lottery retailers to make it clear that the compensation is 7% of the face value of the tickets sold.
- Adds a statutory provision to require retailers to hold lottery proceeds, minus any applicable commissions, in trust until they are received by the Commission, thereby codifying the current contract provisions.
- Differentiates between drawings involving prizes of $5,000 or more and those where the prize is less than $5,000. If the prize is less than $5,000, the drawing will not have to be independently witnessed, and the equipment will not have to be inspected. If the prize is $5,000 or more, all of the conditions will apply. The act also allows an auditor employed by a certified public accounting firm to witness the drawing and do the inspections.

- Requires security audits every two years and performance audits beginning in 2010, and clarifies that the performance audits are in addition to the security audits conducted every year.

This act became effective July 16, 2009. (EC)

Energy Savings Contracts' Cap / Program Administration

S.L. 2009-375, (SB 304). See **Energy**.

Ensure Accountability Regarding Stimulus Funds

S.L. 2009-475 (SB 960) provides for expedited procedures for the State and its agencies to implement and disburse funds provided under the American Recovery and Reinvestment Act (ARRA) as follows:

- Directs that contracts using ARRA funds must, to the maximum extent possible, use fixed price and be made using the competitive bidding process.
- Direct the Secretary of Administration, in coordination with the Office of Economic Recovery, to adopt rules regarding all aspects of making and administering contracts awarded using ARRA funds.
- Adds a new section to the Administrative Procedure Act for rulemaking in connection with the ARRA.
- Provides that State agency bid value benchmarks apply to contracts awarded using ARRA funds.
- Provides that the "no collusion" certification required of all bidders on public contracts applies to contracts made using ARRA funds.
- Exempts the acquisition of supplies, materials, goods, equipment, or services using AARA funds from the requirement that those items be obtained from existing State term contracts.
- Prohibits any party who challenges an administrative decision related to an ARRA-funded contract from obtaining attorney fees if that party prevails.
- Allows the Office of Economic Recovery and Investment to approve the expenditure of ARRA funds not otherwise specified for a particular purpose. The Office of Economic Recovery and Investment must report those authorizations to the Joint Legislative Commission on Governmental Operations.
- Authorizes contracts entered into using ARRA funds to include any remedies necessary to protect the State against misuse of the funds.
- Authorizes the use of an informal bid process for Department of Transportation infrastructure projects of less than $1,200,000 contract cost.
- Amends the State Energy Loan Fund to (1) authorize loans of up to $1 million to be used for an expanded number of purposes, including for residential use, (2) authorize the Department of Administration to contract-out the administration of the Fund, and (3) lowers the allowable interest rates for some types of loans.
- Directs the Utilities Commission to develop, implement, and maintain a web-based system for tracking renewable energy certificates, by July 1, 2010.

This act became effective February 17, 2009. The provisions related to public contracts and administrative procedures expire June 30, 2012. (KCB)

Lobbying Late Fees

S.L. 2009-477 (HB 752) requires:

- The Secretary of State to send notice to a lobbyist, lobbyist principal, or legislative liaison of a late reportable expenditure report by certified mail, return receipt

requested, rather than by registered mail. A late filing fee may not be imposed until the 10th business day after the date the certified letter is received. The late filing fee is $50 per day, with a cumulative maximum of $500.

- The act prohibits registered lobbyists from being appointed to or serving on the North Carolina State Health Coordinating Council (Council). No person who has previously been registered as a lobbyist may be appointed to or serve on the Council within 120 days after the expiration of the lobbyist's registration.

The notice and late filing provisions became effective October 1, 2009. The Council appointment provision became effective August 26, 2009. (DHA)

Ethics Technical Corrections and Other Changes

S.L. 2009-549 (HB 817) makes the following changes to the State Government Ethics Act, the Legislative Ethics Act, and Lobbying Laws:

- Clarifies certain notice provisions applicable to the Legislative Ethics Committee (LEC), including that a hearing will be held no sooner than 15 days after giving a legislator notice.
- Requires a public servant appointed to a nonadvisory board as determined by the State Ethics Commission (SEC) to attend lobbying education and awareness within six months of notification by the SEC that the board has been determined to be nonadvisory. Public servants appointed to a nonadvisory board must file a Statement of Economic Interest (SEI) within 60 days of notification by the SEC that the board has been determined to be nonadvisory. If a public servant fails to file a SEI within 30 days of the due date, the SEC will notify the public servant and the ethics liaison of the failure to file or complete.
- Clarifies that a lobbyist's resignation terminates a lobbyist's annual registration and specifies that resignation and termination of the lobbyist-lobbyist principal relationship is effective upon filing with the Secretary of State's Office.
- Clarifies that if a lobbyist principal written authorization is filed more than 10 business days after the filing of the lobbyist's registration, the lobbyist registration relates back to the filing of that registration when the written authorization is filed.
- Extends the filing period for reports by lobbyists, lobbyist principals, and liaison personnel from 10 to 15 business days following the due date and extends the filing period for miscellaneous items totaling more than $200 in a calendar quarter for the purpose of lobbying from 10 to 15 business days following the close of the calendar quarter in which the item or items were given.
- Directs the SEC to forward a copy of the notice of dismissal of a complaint to the employing entity of the covered person against whom a complaint was filed if the employing entity had received a copy of the notice of complaint and would not be notified otherwise.
- Requires the SEC to publish in its annual statistics publication the age of complaints pending action by the SEC.
- Clarifies that the SEC is not required to evaluate the SEIs filed by legislators or judicial officers.
- Requires the SEC to make available to a public servant, or that person's private legal counsel, all documents and other evidence to be presented to the SEC at the hearing or which a reasonable person would believe are exculpatory at least 30 days prior to the hearing. If documents or other evidence is discovered later, it must be provided as soon as possible after the discovery, but before the hearing.
- Removes the requirement that a person who directly reports to a public servant, but who is not himself or herself a public servant, must attend ethics training. Requires all ethics liaisons to have ethics education.

- Removes the requirement that ex officio student members of the boards of trustees for community colleges, universities, and the Board of Governors file a SEI.
- Adds the SEC to the list of entities to be notified of appointments to boards and commissions.
- Prohibits members of the General Assembly from concurrently serving on boards of community colleges. Any member of the General Assembly currently serving on such a board may continue to serve on that board and may be reappointed to that board.
- Creates a joint study between the SEC and the LEC on the issuance of advisory opinions, with a specific emphasis on advisory opinions related to indirect gifts. Findings of the study may be reported to the 2010 Regular Session of the 2009 General Assembly.
- Makes several technical and clarifying changes.

This act became effective August 28, 2009. (DHA)

Agencies and Departments

Add Division of Law Enforcement Support Services to the Department of Crime Control and Public Safety/Vehicle Titling and Tax Exemption

S.L. 2009-81 (HB 201) establishes the Division of Law Enforcement Support Services within the Department of Crime Control and Public Safety. The act also provides exemptions from the titling requirement and the highway use tax for State agencies acting as a pass-through for vehicles received through a United States Department of Defense program and subsequently transferred to a unit of local government, a volunteer fire department, or a volunteer rescue squad.

This act became effective June 11, 2009.

Note: Also see summary of S.L. 2009-550, Sec. 2 (HB 274, Sec. 2). (TM)

Authorize Emergency Management Certification Program

S.L. 2009-192 (HB 377) directs the Division of Emergency Management to establish a voluntary emergency management certification program under the State emergency management program. The Division sets the standards and guidelines for the program and may consult and cooperate on the development of the program with political subdivisions, other agencies, and with public and private colleges and universities. The Division is directed to make reports and recommendations to the Secretary on training, educational, technical assistance, and equipment needs of State and local emergency management agencies.

The act authorizes the creation of an Emergency Management Training and Standards Advisory Board to oversee the program, review applications, and issue and renew certifications. The act requires that membership of the Board include emergency management experts from the State, localities, and private industry. The duties of the Board include:

- Oversight of the Emergency Management Certification Program.
- Review of applications for certification.
- Issuance of certifications.

The Board must issue certification to any in-State applicant who demonstrates completion of the requirements. The Board has authority to issue certification to a person in another State if it determines that the person's qualifications are substantially equivalent to the

North Carolina requirements. Certifications must be renewed within five years, and the Board may approve reinstatement of an expired certification for good cause.

This act became effective June 26, 2009. (HP)

Expand Division of Emergency Management Authority

S.L. 2009-193 (HB 381) amends the Emergency Management Act to expand the role of the Division of Emergency Management, Department of Crime Control and Public Safety, in planning and coordinating efforts with regard to emergency management, and specifically hazard risk management. The act adds a definition for "Hazard Risk Management," which involves the identification, assessment, and control of risk associated with hazards affecting human health, safety, and property.

The bill also adds several new functions under the State Emergency Program, including:

- Administration of federal and State grant funds.
- Serving as the lead State agency for the coordination of information and resources for hazard risk management.
- Using and maintaining technology that improves communication among all levels of government when involved in emergency management activities.

This act became effective June 26, 2009. (HP)

Allows Mutual Aid Between State and Local Government

S.L. 2009-194 (HB 379) authorizes mutual aid agreements between the State and local governments. Previously, the Governor, who has direction and control of the State emergency management program, was authorized to enter into mutual aid agreements with the federal government and with other states. Chief executive officers of political subdivisions could enter into mutual aid agreements with each other on behalf of the local government. This act authorizes the Governor to enter into mutual aid agreements with local government subdivisions, with the concurrence of a local government subdivision's governing body. The agreements must be consistent with the State's emergency management program and plans.

This act became effective June 26, 2009. (HP)

Facilitate Access to Emergency Supplies

S.L. 2009-195 (HB 1210) amends the North Carolina Emergency Management Act of 1977 to authorize the Governor to:

- Waive curfew and related travel restrictions during a state of disaster.
- Waive motor carrier maximum hours of service limits set by the Department of Crime Control and Public Safety for persons transporting essentials in commerce to a curfew area or assisting in restoring utility services, and directs the Secretary of the Department of Crime Control and Public Safety to develop a certification system for those persons.
- The act directs the Governor, when an abnormal market disruption has been declared, to seek waivers under the federal Clean Air Act to facilitate the transport of fuel within the State to address or prevent a fuel supply emergency.

This act became effective June 26, 2009. (BP)

Add Definition of Biodiesel

S.L. 2009-237 (SB 457) adds definitions of "biodiesel" and "biodiesel blend" to the energy credit banking and selling program, established by the State Energy Office, and makes a

conforming change to the statutes to include reference to the newly-added term "biodiesel blend."

This act became effective July 1, 2009. (BP)

Energy-Efficient State Motor Vehicle Fleet

S.L. 2009-241 (HB 1079) requires the Department of Administration (Department) to give preference to new passenger motor vehicles that have a fuel economy that is in the top 15% of that class of comparable automobiles for passenger motor vehicles purchased by the State. The award for every new passenger motor vehicle that is purchased by the Department shall be based on the Department's evaluation of the best value for the State, taking into account fuel economy ratings and life cycle costs that reasonably consider both projected fuel costs and acquisition costs. The new passenger motor vehicle acquisition requirements do not apply to vehicles used in law enforcement, emergency medical response, and firefighting.

Beginning October 1, 2011, the Department of Administration must prepare and submit an annual report for the previous fiscal year to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission that includes:

- The number of new passenger motor vehicles purchased under this act.
- The savings or costs for the purchase of vehicles to comply with this act.
- The quantity and cost of fuel saved.

This act becomes effective July 1, 2010, and applies to contracts to purchase passenger motor vehicles on or after that date. (DHA)

Statutorily Establish Division of Emergency Management

S.L. 2009-397 (HB 378) adds the Emergency Management Division, Department of Crime Control and Public Safety, to the list of subunits of departments whose "functions, powers, duties, and obligations" are transferred to and vested in the Department of Crime Control and Public Safety. The act grants the Division the following powers and duties:

- To exercise the powers and duties exercised prior to the enactment of this act.
- To exercise the powers and duties conferred on the Division by Chapter 166A of the General Statutes.
- To exercise any other powers vested by law.

This act became effective July 31, 2009. (HP)

Energy to Commerce; OEO to Energy

S.L. 2009-446 (HB 1481) transfers the State Energy Office from the Department of Administration to the Department of Commerce as a Type I transfer. By statute, a Type I transfer means that all or part of an existing agency is transferred to a principal department, including its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, as well as the functions of budgeting and purchasing. The act also transfers the Residential Energy Conservation Assistance Program from the Department of Health and Human Services to the Energy Office of the Department of Commerce as another Type I transfer. Additionally, the act recodifies the Energy Assistance Act for Low-Income Persons from the statutes governing the Department of Health and Human Services to the statutes governing the Department of Commerce.

The act makes various conforming changes to the Energy Policy Act of 1975, including the following:

- Reduces the membership of the Energy Policy Council from 18 to 16 members, removes ex-officio members, and changes some of the required qualifications for certain members.

- Amends the duties and responsibilities of the Energy Policy Council to include developing and recommending policies related to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements in the State's infrastructure and energy economy.
- Repeals the Energy Research and Development Program.
- Amends the required content of the Council's annual report to include an analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand.

The act directs the Secretary of Commerce and the Chair of the Utilities Commission to jointly prepare a report examining the respective duties and functions of the Utilities Commission and the Energy Policy Council and recommend changes to address any duplicative duties and responsibilities. The report is due to the Governor on or before January 31, 2010.

This act became effective August 7, 2009. (DHA)

Criminal Justice Data Integration Pilot Program

S.L. 2009-451, Sec. 6.10 (SB 202, Sec. 6.10) continues the requirement, initially set forth in Section 6.15 of S.L. 2008-107, for the Office of the State Controller to develop a Criminal Justice Data Integration Pilot Program in Wake County. The Pilot Program must achieve and demonstrate full operational capability before it is expanded State-wide. The Program must continue to comply with all necessary security measures and restrictions to ensure the confidentiality of information. The Office of the State Controller is directed to:

- Develop a detailed plan for the State-wide expansion of the program.
- Work with the data integration software vendor to ensure that licenses are obtained at the least possible cost.
- Identify a State data center to host the program, and report its recommendation to the Joint Legislative Oversight Committee on Information Technology.

Funds appropriated for the Program may be used only for that purpose, and the Program is assigned first priority for funds available to the BEACON Data Integration Project. The Office of the State Controller must continue reporting quarterly, beginning October 1, 2009, to the House of Representatives and Senate Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division.

This section became effective July 1, 2009. (HP)

Streamline Plan Review and Inspection/State Buildings

S.L. 2009-474 (SB 425) streamlines the plan review and inspection process for state buildings by transferring the authority for building code enforcement with respect to state buildings from the Department of Insurance to the Department of Administration. The act transfers four code enforcement positions from the Department of Insurance to the Department of Administration, and creates four code enforcement positions in the Department of Administration. The act continues the authority of the Secretary of Administration to appoint members to the Board of Awards.

This act became effective October 1, 2009. (EC)

Governmental Employment

Implement Executive Order #11/Protect Employees

S.L. 2009-26 (HB 917) makes the provisions of Executive Order No. 11 applicable to the Legislative and Judicial Branches and provides certain protections to all State employees.

The Governor issued Executive Order No. 11 on April 28, 2009. It provides for the annualized base salaries of State employees employed in the Executive Branch, public schools, community colleges, and The University of North Carolina to be reduced by one-half of 1% over the remainder of the fiscal year. It also provides that employees whose salaries are reduced receive 10 hours of flexible furlough leave to be taken between July 1 and December 31, 2009.

The act extends the provisions of the Executive Order to employees of the judicial and legislative branches, and to members and officers of the General Assembly. It encourages justices, judges, and officers whose salaries are constitutionally protected from reduction to participate in the pay reduction by donating to the State at least the amount of their compensation that would have been reduced if those persons were not exempt.

The act provides that a public employee who receives a temporary reduction in compensation related to the Executive Order or the act and not related to a disciplinary reduction will not suffer any diminution of retirement average final compensation. It also provides that a reduction in pay under the Executive Order does not constitute a demotion under the State Personnel Act.

This act became effective May 14, 2009. (KG)

Develop Employee Benefits Statement

S.L. 2009-63 (HB 1221) requires the Office of State Personnel, Department of Public Instruction, North Carolina Community Colleges, and the University of North Carolina to conduct a study on the development of personalized employee benefits statements for State, public school, and community college employees. These benefits statements must include an employee's total compensation, including all cash income, and the value of employee benefits. At a minimum the statement must include the following:

- Employee and dependent coverage under the State Health Plan for Teachers and State Employees.
- Employee and survivors' coverage under the Teachers' and State Employees' Retirement System.

The Office of State Personnel, Department of Public Instruction, North Carolina Community Colleges, and the University of North Carolina must submit an interim report to the General Assembly and the Fiscal Research Division on or before December 31, 2009, and a detailed written report on the development of the employee benefits statement, including a recommended implementation schedule and an estimate of the costs of any information technologies or modifications necessary to generate the statements on or before June 30, 2010.

This act became effective June 8, 2009. (TM)

Law Student Externs at General Assembly

S.L. 2009-129 (HB 1171) amends statutory definitions of "legislative employee" to include students at accredited law schools while in an externship program at the General Assembly approved by the Legislative Services Commission. A violation of the confidentiality requirements for legislative communications by law student externs is grounds for referral to the academic institution for appropriate discipline. As a result of this act, externship participants are

subject to the gift ban, conflict of interest provisions, and all other ethical standards contained in the State Government Ethics Act that apply to legislative employees.

This act became effective June 19, 2009. (TM)

Boards, Commissions, and Committees

Legislative Ethics Committee Term Changes/Ethics Training

S.L. 2009-10 (SB 136) provides that legislators who serve on the Joint Legislative Ethics Committee serve a term of four years with no option to serve two consecutive terms. It also implements staggered terms so that only one-half of the committee cycles off each biennium. The act also provides that the time frame for a legislator's ethics education is two months from the convening of the General Assembly.

This act became effective March 26, 2009. (KG)

Establish North Carolina Financial Literacy Council

S.L. 2009-265 (SB 1019) establishes the North Carolina Financial Literacy Council, which consists of 18 members appointed by the Governor to serve 3-year terms. The Council is to:

- Monitor and assist the Department of Public Instruction in the coordination of statewide delivery of financial education within the public school system.
- Identify programs designed to increase the financial literacy of North Carolinians outside the public school system.
- Work to expand access to financial education resources and programs in communities across North Carolina.

Administrative and support staff for the Council is to be provided by the Department of Justice.

This act became effective June 30, 2009. (EC)

Clarifying Changes to State Law – North Carolina Travel and Tourism Board

S.L. 2009-550, Sec. 7 (HB 274, Sec. 7) amends the membership of the North Carolina Travel and Tourism Board to provide that the Chairperson of the Travel and Tourism Coalition may appoint a designee to serve on the Board.

This section became effective August 28, 2009. (TM)

Clarifying Changes to State Law – Expand General Statutes Commission

S.L. 2009-550, Sec. 8 (HB 274, Sec. 8) expands the membership of the General Statutes Commission from 12 to 14 members by adding an appointment by the dean of Elon University School of Law in even-numbered years, and an appointment by the dean of the Charlotte School of Law in odd-numbered years. The term for the initial appointment by the dean of the school of law for Elon University will end May 31, 2010. The term for the initial appointment by the dean of the Charlotte School of Law will end May 31, 2011.

This section became effective August 28, 2009. (TM)

Studies

Study Office of State Budget and Management, Office of State Controller, and Treasurer Consolidation

S.L. 2009-451, Sec. 22.1 (SB 202, Sec. 22.1) requires the Program Evaluation Division of the General Assembly to:

- Review constitutional duties of the Governor in preparing and executing the budget, and the constitutional status of the duties of the office of the State Treasurer.
- Study the feasibility of consolidating the Office of the State Controller, the Office of State Budget and Management, and some of the functions of the State Treasurer, or reallocating functions of those State agencies.

The Program Evaluation Division is directed to report findings and recommendations to the chairs of the full Senate and House Appropriations Committees and the Fiscal Research Division no later than April 1, 2010.

This section became effective July 1, 2009. (TM)

Vetoed Legislation

Clarify Legislative Confidentiality

HB 104. See **Vetoed Legislation.**

Chapter 23
Transportation

Giles S. Perry (GSP), Wendy Graf Ray (WGR), William Patterson (WP), Kelly Quick (KQ)

Enacted Legislation

Department of Transportation

Highway Beautification Change

S.L. 2009-228 (HB 755) expands the authorized use of that portion of revenue from the Special Registration Plate Account designated for beautification, to allow those funds to be used for beautification on all highways.

This act became effective June 30, 2009. (GSP)

Allow Department of Transportation to Provide Direct Funding

S.L. 2009-235 (SB 648) authorizes the Department of Transportation (Department) to enter into contracts with private developers for the engineering, design, or construction of improvements to the State highway system. The act authorizes the Department to establish policies and promulgate rules providing for its participation in contracts for projects performed on or abutting a state highway or on a facility planned to be added to the State highway system for purposes of completing incidental work on the State highway system. The act provides that for projects funded or constructed under the act: (1) the Department's participation is to be limited to the lesser of 10% of the amount of the engineering contract and any construction contract let by the developer for the project or $250,000, and participation in the contracts by the Department is not to exceed costs associated with normal practices of the Department; (2) plans for the project must meet established standards and be approved by the Department; and (3) projects must be constructed in accordance with the plans and specifications approved by the Department.

The act provides that the Secretary of Transportation report annually, not later than March 1, in writing to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee on all agreements entered into between the Department and a private developer for participation in private engineering and construction contracts under this act.

This act became effective June 30, 2009, and expires December 31, 2011. (GSP)

Bidding Process Changes/Maintenance and Operations

S.L. 2009-266 (SB 828) makes the following changes to the statutes dealing with highways:

- Changes the maximum dollar amount at which contracts for highway maintenance may be let using an informal bid process from $1,200,000 or less to $1,200,000 per year or less, and changes the maximum dollar amount for small project bidding for maintenance projects from $500,000 or less to $500,000 per year or less.

- Extends the sunset on the Department of Transportation's (Department) Disadvantaged Minority-Owned and Women-Owned Businesses Program from August 31, 2009, to August 31, 2010.
- Updates various statutes relating to highways to make technical and clarifying changes and to reflect the Department's focus on all transportation infrastructure, rather than just roads and highways.

This act became effective August 1, 2009. (WGR)

Traffic Calming Devices/Residential Subdivisions

S.L. 2009-310 (HB 182) authorizes the installation or utilization of traffic tables or traffic calming devices on State-maintained subdivision streets if specified requirements are met.

This act became effective October 1, 2009, and applies to traffic tables and traffic calming devices installed on or after that date. (GSP)

Transportation Corridor Mapping Changes

S.L. 2009-332 (HB 881) makes the following changes to the law regarding highways:

- Includes counties in transportation corridor mapping by allowing counties to adopt or amend a transportation official corridor map for portions of the existing or proposed State highway system or any public transportation corridor that is in the Transportation Improvement Program.
- Allows regional public transportation authorities to adopt or amend transportation corridor maps for any portion of the existing or proposed State Highway System, as well as for proposed public transportation corridors or adjacent stations or parking lots included in the long-range transportation plans.
- Provides that property may not be regulated until the transportation corridor official map has been adopted or amended by the local governing board, regional transportation authority, North Carolina Turnpike Authority, or by the Department of Transportation.
- Authorizes the Department of Transportation to furnish municipalities with road maintenance materials upon agreement for reimbursement. Reimbursement is to be in an amount at least equal to the cost of materials, plus the actual reasonable cost of handling and storing the materials.

This act became effective August 1, 2009. (WGR)

Appropriations Act of 2009/Facilities Constructed Within Rights of Way/Permeable Pavement

S.L. 2009-451, Sec. 25.6 (SB 202, Sec. 25.6) directs the Department of Transportation, prior to the beginning of construction, to determine whether all sidewalks and other facilities primarily intended for the use of pedestrians and bicycles, constructed within the right-of-way of a public street or highway that is a part of the State highway system or an urban highway system, must be constructed of permeable pavement. "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel is not to be considered permeable pavement.

This act became effective October 1, 2009, and applies to facilities constructed on or after that date. (GSP)

Division of Motor Vehicles Bureau of License and Theft / Vehicles

S.L. 2009-495 (SB 631) authorizes the Division of Motor Vehicles, Bureau of License and Theft, to:

- Retain any vehicle it seizes in the course of any investigation that has been forfeited to the Division by a court of competent jurisdiction.
- Accept custody and ownership of any vehicle seized by the federal government and forfeited by a court of competent jurisdiction to the Division.
- Use vehicles forfeited to or accepted by the Division pursuant to this act to conduct undercover operations and inspection station compliance checks throughout the State.
- Dispose of seized vehicles when they are no longer needed by the Division.

This act became effective August 26, 2009. (GSP)

GARVEE Bonds / Repayment

S.L. 2009-497 (HB 12) clarifies the existing statutory requirement that all funds derived from GARVEE bonds be distributed in accordance with the State equity distribution formula for transportation funds, to specify that the GARVEE funds are subject to the equity formula when repaid. GARVEE bonds are debt instrument financing mechanisms that use payment of future Federal-aid highway funds to retire the bond.

This act became effective August 26, 2009. (GSP)

Modify Appropriations Act / Emissions Program Call Center

S.L. 2009-575, Sec. 20 (HB 836, Sec. 20) directs the Department of Transportation to replace the out-of-state contractors currently handling questions from service station operators about the State's emissions program with State employees at an existing Division of Motor Vehicles call center within the State, and authorizes the Division of Motor Vehicles to create up to 15 new receipt-supported positions to replace the out-of-state contractors.

This section became effective July 1, 2009. (WP)

Drivers Licenses

Clarification / Hearing on License Restoration

S.L. 2009-99 (HB 1198) amends S.L. 2007-493, which increased the waiting time for a hearing on conditional restoration of a permanently revoked license from three years to five years after revocation. The amendment clarifies that the increase applies only to persons whose waiting period commenced on or after August 30, 2007.

This act became effective June 12, 2009. (WP)

License Renewal / Active Military Duty

S.L. 2009-274 (HB 98). See **Military, Veterans', and Indian Affairs**.

Habitual DWI-Reinstatement Petition/10 Years

S.L. 2009-369 (HB 1185) permits an individual convicted of habitual impaired driving to petition for a hearing to restore driving privileges upon proof that the person has had no traffic or criminal convictions within the past 10 years and that the person "is not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs" (a stricter standard than the "not currently an excessive user of alcohol" standard applicable to persons seeking restoration after revocation for offenses other than habitual impaired driving). The act also amends G.S. 20-17.8 to make that section's ignition interlock provisions applicable to a restoration of a license under this act.

This act became effective December 1, 2009, and expires on December 1, 2014. (WP)

Commercial Drivers License Changes

S.L. 2009-416 (SB 931) makes several changes to the commercial drivers license (CDL) statutes:

- Expands the definition of "conviction" for out-of-State violations to include a prayer for judgment continued.
- Amends the definition of "employer" to include someone who is subject to alcohol and drug testing provisions under federal law, and including a consortium or third-party administrator.
- Provides for disqualification for life, without possibility of reinstatement, if the person has had a CDL reinstated in the past and is convicted of another major disqualifying offense.
- Allows 10-year-old convictions to be considered by the Division of Motor Vehicles in determining suspensions or revocations if the offense was committed by a holder of a CDL involving a noncommercial motor vehicle.
- Allows a person who holds any license recognized by the federal government that grants the privilege of driving a commercial motor vehicle to operate a commercial motor vehicle in this State.
- Prohibits an employer from knowingly allowing a driver to operate a commercial motor vehicle when the driver, the commercial motor vehicle, or the motor carrier operation is subject to an out-of-service order.
- Changes the civil penalty applicable to a person who drives a commercial motor vehicle without a CDL.

This act becomes effective March 31, 2010, and applies to offenses occurring on or after that date. (GSP)

Motorcycle Learner's Permit

S.L. 2009-492 (SB 64) amends the law related to motorcycle endorsements and learner's permits. The act requires a person under the age of 18 to provide proof of successful completion of a motorcycle education course in order to obtain a motorcycle endorsement or a learner's permit. All other requirements to obtain an endorsement or learner's permit remain the same; however, the act does prohibit any person under the age of 18 from carrying passengers on a motorcycle. In addition, the act provides that a learner's permit issued to any person expires 12 months after it is issued and may be renewed only for one additional six-month period (was 18 months with no limitation on renewal).

The act requires the Commissioner of Motor Vehicles to determine the availability of spaces for students in approved motorcycle education courses to see if there is adequate space to meet expected demand. The Commissioner must report the results of this study to the Joint Legislative Commission on Governmental Operations on or before March 1, 2010. The act also

requires the University of North Carolina Highway Safety Research Center to study whether individuals 18 to 21 years of age should be required to successfully complete a motorcycle safety course prior to being issued a motorcycle endorsement or learner's permit. The results of this study are to be reported to the Joint Legislative Transportation Oversight Committee on or before March 1, 2010.

The provisions of this act that amend statutes related to motorcycle endorsements and learner's permits become effective January 1, 2011. The remaining provisions of the act, which require studies, became effective August 26, 2009. (WGR)

Waive Commercial Drivers License Test Requirement for Military Personnel

S.L. 2009-494 (SB 423) allows the Division of Motor Vehicles to waive the skills test for an otherwise qualified commercial drivers license (CDL) applicant who is a member of the armed forces, under certain circumstances. The law generally requires that an applicant pass both a knowledge and a skills test for driving a commercial motor vehicle prior to being issued a CDL. The tests are to be prescribed and conducted by the Division of Motor Vehicles and must comply with minimum federal standards. This act authorizes the Division to waive the skills test for an applicant that meets the following requirements:

- Has passed a written knowledge exam.
- In the last two years, has not:
  - Had a driving privilege suspended, revoked, or cancelled.
  - Had convictions that would require mandatory revocation of a license or CDL disqualification.
  - Been convicted of violating traffic control laws in connection with an accident.
  - Refused a chemical test when charged with an implied consent offense.
- Is an active or reserve member of the armed forces, regularly employed in a job requiring the operation of a commercial motor vehicle, and either:
  - Has taken and successfully completed a skills test administered by a State with a classified licensing and testing system behind the wheel of a commercial motor vehicle of the class and type for which the applicant seeks to be licensed; or
  - Has operated for the two-year period prior to the date of application a commercial motor vehicle of the class and type for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military.

This act became effective January 1, 2010, and applies to any commercial drivers license issued on or after that date. (WGR)

Continuous Alcohol Monitoring Systems

S.L. 2009-500 (HB 926) allows the use of continuous alcohol monitoring results from a monitoring system approved by the Division of Motor Vehicles (DMV) as evidence of abstinence from alcohol consumption for purposes of having a revoked license restored. The act requires the DMV to consider documentation of 120 days of abstinence immediately prior to the consideration for restoration as evidence of abstinence.

The act also authorizes the DMV to adopt guidelines for the acceptance of the evidence, and authorizes the use of up to $10,000 in funds appropriated to the DMV for the development and promulgation of guidelines to implement the act.

The appropriations portion of this act became effective July 1, 2009, and the license revocation provisions are effective for hearings or proceedings occurring on or after December 1, 2009. (WP)

License Plates/Vehicle Registration

Require Documentation-Certain Special Plates

S.L. 2009-121 (HB 1094) requires the Division of Motor Vehicles to verify that recipients of special plates are eligible for the plate, and requires the Division of Veteran Affairs to be responsible for verifying and maintaining documentation related to eligibility for special plates based upon military service.

This act became effective June 19, 2009. (WP)

Create New Titling Categories

S.L. 2009-405 (SB 820) amends the law regarding titling of motor vehicles as follows:

Redefine "specially constructed vehicles". – The act deletes the prior definition, which required that the vehicle not be materially altered from original construction. The new definition includes vehicles in the following categories:

- Replica – a vehicle, excluding motorcycles, that when assembled replicates an earlier year, make, and model vehicle.
- Street rod – a vehicle, excluding motorcycles, manufactured before 1949, that has been materially altered or with a body constructed from nonoriginal materials.
- Custom-built – a vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts, that does not resemble any other manufactured vehicle. Also includes a motorcycle assembled from a kit or that has been materially altered or has a body constructed from nonoriginal materials.

"Inoperable Vehicle". – The act defines "Inoperable Vehicle" as a motor vehicle that is substantially disassembled and therefore unsafe to be operated on a highway. An inoperable vehicle may be titled, but no registration is issued until the vehicle is inspected by the License and Theft Bureau to ensure that the vehicle is substantially assembled. The title is to be labeled "inoperable" until it is inspected, at which time it will be retitled with the proper classification.

Title and registration of specially constructed vehicles. – The act provides that specially constructed vehicles be titled as follows:

- Replica
  - Titled as year, make, and model of vehicle replicated.
  - Title and registration labeled "Replica".
  - Title labeled "Specially Constructed Vehicle".
- Street Rod
  - Titled as manufacturer's assigned model year, with manufacturer's name as make.
  - Title and registration labeled "Street Rod".
  - Title labeled "Specially Constructed Vehicle".
- Custom-built
  - Titled with make "Custom-built" and year it was built as model year.
  - Title and registration labeled "Custom-built".
  - Title labeled "Specially Constructed Vehicle".

These categories of vehicles no longer will be branded as "Reconstructed Vehicle".

Notification and registration when new engine installed. – Prior to this act, the law required the owner of a vehicle to notify the Division of Motor Vehicles (DMV) when the engine was replaced, and the engine number was included on the registration records. The owner also was required to surrender the registration and title and apply for a duplicate with the new engine number. This act makes the notification and re-registration requirement applicable for an engine change only if the engine number is the sole means of identifying the vehicle.

DMV verification of vehicles. – The act requires specially constructed vehicles and out-of-State vehicles that are 35 model years or older to undergo a vehicle verification by DMV prior to titling the vehicle. For out-of-State vehicles, the verification consists of verifying that the public vehicle identification number matches the ownership documents. No covert numbers are to be examined unless the inspector has probable cause to believe that the documents or numbers do not match the vehicle. The DMV is authorized to register a vehicle pending the verification for one year, to give the owner time to schedule the verification examination and still drive the vehicle.

Appeal of title classification. – The act creates a process for appeals from a classification determination to the Vehicle Classification Review Committee, which consists of two employees of the License and Theft Bureau and three members of the public appointed by the Commissioner. The three public members are individuals with expertise in antique or specially constructed vehicles, with one chosen from a list of nominees provided by the Antique Automobile Club of America, one chosen from a list of nominees provided by the Specialty Equipment Market Association, and one chosen from a list of nominees provided by the National Corvette Restorers Society. The decision of the Committee may be appealed to the Commissioner.

The sections of this act dealing with replacement of engines and the vehicle verification procedure became effective August 5, 2009. The remainder of the act became effective October 1, 2009. (WGR)

License Plate Frame/State Name Visible/Study

S.L. 2009-456 (HB 67) makes covering the State name, year sticker, or month sticker on a license plate with a license plate frame an infraction punishable by a penalty not to exceed $100.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. During the period from December 1, 2009, to November 30, 2010, an operator of a motor vehicle who violates this act is to be given a warning only of violation. (GSP)

Motor Vehicle Dealer Franchise Laws

Clarify Motor Vehicle Franchise Laws/Termination Assistance

S.L. 2009-338 (SB 913) makes the following changes to clarify the motor vehicle dealers and manufacturers licensing laws and motor vehicle dealer termination rights:

- Provides that manufacturers may require a dealer to inventory only the full line current model year new motor vehicles if the requirements are not unreasonable.
- Authorizes continuation of certain manufacturer price variation programs until June 30, 2014.
- Prohibits a manufacturer from taking, or threatening to take, an adverse action against a dealer because the dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country, or who resold the vehicle to a third party, unless the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase of the vehicle from the dealer.
- Provides that automobile dealer warranty obligations applicable to a motor vehicle manufacturer also apply to a component parts manufacturer. Component part means an engine, power train, rear axle, or other part that is not warranted by the final manufacturer of the motor vehicle.

- Prohibits a manufacturer from terminating, not renewing, or canceling a franchise unless the manufacturer purchases and compensates the dealer for its motor vehicles, parts, equipment, and tools.

This act became effective July 24, 2009. (WGR)

Clarify Motor Vehicle Dealer Franchise Rights

S.L. 2009-496 (SB 914) makes the following changes to the motor vehicle dealers and manufacturers licensing laws to clarify motor vehicle dealer franchise rights:

- Makes it unlawful for a manufacturer to condition the awarding, renewal, relocation, or transfer of a franchise on the dealer entering into a site control agreement or exclusive use agreement. Any such provision in an agreement is voidable at the election of the dealer.
- Prohibits a successor manufacturer (one who acquires any part of the business of another manufacturer on or after January 1, 2009), for a period of four years after acquiring the business, from entering into a same line make franchise agreement with any person in the same relevant market area in which the predecessor manufacturer previously terminated a franchise with a dealer, without first offering the franchise to the former franchisee at no cost and without additional restrictions, unless any of the following conditions apply:
  - As a result of the former franchisee's termination, the predecessor manufacturer had consolidated the line make with another line make for which the predecessor manufacturer had a franchisee with an existing dealership facility in the relevant market area.
  - The successor manufacturer has paid the former franchisee the fair market value of the franchise.
  - The successor manufacturer proves that the former franchisee is unfit to own or manage the dealership.

This act became effective August 26, 2009. (WGR)

Motor Vehicle Laws

Motorsports Vehicle Combination Lengths

S.L. 2009-7 (SB 37) allows motor vehicle combinations that are up to 90 feet in length used in connection with motorsports competition events to operate on highways in the State. State law generally prohibits any combination of vehicles that exceeds a total length of 60 feet. In addition, the Department of Transportation is authorized to prohibit motor vehicle combinations on portions of any route on the State highway system if the vehicle combination cannot be safely accommodated on that route. Oversize permits are not available for the vehicle combinations generally used in motorsports competition events because they transport divisible loads; prior to this act, therefore, those combinations could not be legally operated on State highways.

This act allows certain motor vehicle combinations connected with motorsports competition to operate on State highways. The combinations allowed include a cab or other motorized vehicle unit with living quarters, and an attached specialty trailer, and may be up to 90 feet in length. The combinations are authorized for the following purposes only:

- Driving to or from a motorsports competition event.
- To purchase fuel or conduct repairs or maintenance on the competition vehicle.
- For other activities related to motorsports.

The act makes clear that the Department is still authorized to prohibit these combinations on specific routes.

This act became effective March 19, 2009. (WGR)

Garbage Collection Trucks Parking on Highways

S.L. 2009-104 (HB 825) exempts solid waste vehicles engaged in collecting garbage or recyclable material from the general prohibition on non-disabled vehicles stopping or standing on the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits.

This act became effective October 1, 2009, and applies to offenses occurring on or after that date. (GSP)

Create Exemption/Size-Weight for Sage Haulers

S.L. 2009-127 (HB 838) creates an exemption to maximum length and weight restrictions for vehicles transporting unprocessed sage from farm to market.

Under general law applicable to motor vehicles, a vehicle with two or three axles may not exceed 40 feet in length, and the maximum tandem-axle weight for a vehicle operating without a special permit is 38,000 pounds. However, the Department of Transportation is authorized to establish light-traffic roads where the maximum weight is restricted further when the road is inadequate to carry and will be injuriously affected by heavier vehicles.

Prior to this act, there was an exception to the general length and weight restrictions for vehicles transporting unprocessed cotton from farm to gin. They could be up to 50 feet in length and up to 50,000 pounds and were allowed to operate on light-traffic roads from point of origin to the nearest State-maintained road that was not a light-traffic road. The weight exception applied only from September 1 through March 1 of each year.

This act increases the maximum length of a vehicle transporting sage from farm to market from 40 feet to 50 feet, and increases the maximum tandem-axle weight of a vehicle transporting sage from farm to market from 38,000 pounds to 50,000 pounds. In addition, the vehicle is allowed to operate on light-traffic roads only from the vehicle's point of origin on a light-traffic road to the nearest State road that is not a light-traffic road. The act creates the same exception for vehicles transporting sage from farm to market as the exception that previously existed for vehicles transporting unprocessed cotton from farm to gin, except that the act also deletes the language that made the weight exception applicable only from September 1 through March 1 of each year. Under the act, the weight exception for both sage and cotton now applies all year.

This act became effective June 19, 2009. (WGR)

Motor Vehicle Size and Weight Law Changes

S.L. 2009-128 (SB 1000) changes the law concerning size and weight of a vehicle operating on a highway to:

- Provide that the overall length of a single vehicle with any number of axles is restricted to forty feet.
- Require that vehicles transporting equipment or poles for emergency utility repair at night have trailers that are no longer than 53 feet in length.
- Remove the 53-foot restriction on the maximum length for a combination of a house trailer used as a mobile home with its towing vehicle.
- Require certain farm vehicles to be self-propelled when operating on a highway.

This act became effective December 1, 2009, and applies to offenses occurring on or after that date. (GSP)

No Texting While Driving

S.L. 2009-135 (HB 9) prohibits all drivers from using a mobile telephone to read or send electronic mail or text messages while operating a motor vehicle on a public street, highway, or public vehicular area. An exception would apply for law enforcement officers, firefighters, and ambulance drivers in performance of their official duties. The act does not apply to vehicles that are parked or stopped, or to voice-operated technology, to GPS devices, or to devices that are part of a digital dispatch system, such as OnStar.

A violation of this act while operating a school bus is a Class 2 misdemeanor, punishable by a fine of not less than $100. Any other violation of this act is an infraction, punishable by a fine of $100 and the costs of court. No drivers license points or insurance surcharge can be assessed as a result of a violation of this act. Failure to comply with the provisions of this act does not constitute negligence *per se* or contributory negligence *per se* by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (GSP)

The Nicolas Adkins School Bus Safety Act

S.L. 2009-147 (HB 440) authorizes the use of automated camera and video recording systems to detect and prosecute drivers who violate the law by passing a stopped school bus. The act provides that any photograph or video recorded by a camera or video recording system would, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging that a driver violated the law by passing a stopped school bus displaying a stop sign. The act also increases the penalty for striking a person when willfully passing a stopped school bus to a Class H felony.

This act became effective December 1, 2009, and applies to offenses committed on or after that date. (GSP)

Modify Speed Zone Restrictions

S.L. 2009-234 (SB 649) provides that the speed limit for roads that are annexed into the corporate limits of a municipality does not automatically drop to 35 miles per hour upon annexation. The act provides that if a road is annexed, the existing speed limit remains in effect until the Department of Transportation and the municipality pass concurrent ordinances to change the speed limit.

The act also provides that the additional $250 penalty for speeding in a work zone applies only if a sign is posted at the beginning and end of any segment of the highway work zone stating the penalty for speeding in that segment of the work zone.

The provisions of the act governing speed limits for newly-annexed roads became effective June 30, 2009. The provisions of the act governing work zone penalties became effective December 1, 2009, and apply to offenses occurring on of after that date. (GSP)

Motor Vehicle Inspection Program Changes

S.L. 2009-319 (HB 882) makes the following changes to the law as it relates to the motor vehicle inspection program:

Refuse registration for vehicles not in compliance. – Prior to this act, the Division of Motor Vehicles was required to refuse registration for a vehicle that was not in compliance with emission inspection requirements or when a civil penalty for failing to comply had not been

paid. The act amends the law to require the Division to refuse registration for a vehicle that is not in compliance with any inspection requirement, whether it is safety or emissions.

Proof of financial responsibility required for three-day trip permit. – Prior to this act, a person with an insured vehicle whose inspection authorization or registration had expired was authorized to get a three-day trip permit that would allow the person to drive the vehicle only from the place where the vehicle is parked to a location where the vehicle can be inspected or registered. The act amends the law to clarify that the person must provide proof of financial responsibility to get the permit, not that the vehicle must be insured.

Temporary exemption from inspection. – The act authorizes the Division to temporarily exempt a vehicle from inspection requirements when a vehicle subject to emissions inspection requirements is principally garaged in the State but primarily operated outside of an emissions county or outside of the State.

Criminal penalty for inspecting without a license. – The act makes it a Class 3 misdemeanor to perform a safety or emissions inspection on a vehicle without the appropriate license.

The provision in this act that makes it a Class 3 misdemeanor to perform an inspection without a license became effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of the act became effective July 17, 2009. (WGR)

Various Changes in Motor Vehicle Laws

S.L. 2009-376 (SB 368) makes the following changes to the motor vehicle laws:

Retired State Highway Patrol special license plate. – Prior to this act, the surviving spouse of a person who is deceased and retired from the State Highway Patrol was required to apply for a plate within 90 days of the qualifying spouse's death. The act eliminates the time requirement and requires an applicant for the plate to present a copy of the retiree's identification card or letter of retirement.

Informal review process to protest civil penalties. – The act reinstates a mandatory informal review process for civil penalties assessed by the Department of Crime Control and Public Safety. The Department used an informal process prior to 2008, when the provision authorizing the process was repealed. The act creates a new process requiring the person who is assessed a civil penalty to pay the penalty or make a written request for review by the Department within 30 days of the assessment. Penalties must be paid within 30 days of the notice of decision. However, the person may pay under protest and bring an action for refund of the penalty in superior court.

All vehicles over 10,000 pounds in intrastate commerce to be marked. – State law requires a motor vehicle weighing between 10,000 pounds and 26,001 pounds that is used in intrastate commerce to be marked on the side with the name of the owner. The act requires that vehicles 26,001 pounds and greater be marked as well.

Flags at the end of a load. – When a load on a vehicle extends more than 4 feet beyond the rear of the bed or body of the vehicle, the law prior to this act required that a red or orange flag not less than 12 inches in length and width be displayed at the end of the load during daylight hours. The act increases the flag size required from 12 inches to 18 inches in length and width.

Safe tires. – The act amends safe tire specifications for vehicles with a gross vehicle weight rating of 10,001 pounds or more in order to comply with federal requirements.

Oversize/overweight penalties. – The act authorizes overweight penalties only to the extent the actual weight exceeds what is allowed in the permit (rather than having the penalty apply as if the operator did not have a permit). It also requires the Department to assess penalties for violating special permit conditions, decreases the maximum penalty from $25,000 to $10,000, and makes it a flat $1,500 penalty for operating without the proper number of escorts.

"Out-of-Service" vehicles. – The Department of Crime Control and Public Safety has the authority to prohibit a motor carrier from operating a vehicle that is unsafe for use. Prior to

this act, it was the duty of an agent to guide the vehicle to a location to correct the defect if the vehicle was in operative condition and movement was not dangerous. The act requires the agent to declare the vehicle "Out-of-Service" if its condition is likely to cause a crash or breakdown and prohibits anyone from operating the vehicle until all required repairs have been completed.

Brake exemptions. – The law generally requires all motor vehicles operated on the highways to be equipped with brakes adequate to control the movement of the vehicle. This act eliminates or narrows exemptions from brake requirements as follows:

- Truck-tractors with semitrailers attached and three or more axles – brakes not required on front wheels only if manufactured prior to July 2, 1980.
- Eliminates exemption for semitrailers when used by farmers.
- Trailers used by farmers – brakes not required only if not equipped with brakes from manufacturer prior to October 1, 2009.

Seat belt exemption for garbage trucks. – The law generally requires occupants in motor vehicles to have a seatbelt properly fastened when the vehicle is in forward motion on a street or highway. Prior to this act, there was an exemption from the requirement for drivers or passengers in residential garbage or recycling trucks while on collection rounds and going to and from loading and unloading locations. The act eliminates the exemption for the driver and for trips to and from loading and unloading locations, so the exemption applies only to passengers during rounds.

Prohibit viewing of computer or video players in front seat of vehicles. – State law prohibits television viewers or screens in the front seat of motor vehicles. The act amends the law to prohibit viewing a television, computer, or video player while driving on a highway or public vehicular area.

Penalties to Civil Penalty and Forfeiture Fund. – The act clarifies that all proceeds from civil penalties collected by the Department of Crime Control and Public Safety are to be remitted to the Civil Penalty and Forfeiture Fund.

Proceeds from lease to support Voice Interoperability Plan for Emergency Responders (VIPER) project. – Generally, when land owned by the State is sold or leased, a service charge must be paid into the State Land Fund. The act allows the Highway Patrol to lease space on a tower owned as part of the VIPER project and have all of the proceeds deposited into an account to be used to support the VIPER network and not pay the service charge to the State Land Fund.

Clarify weight limits on posted bridges. – The Department of Transportation has the authority to determine the load-carrying capacity for bridges in the State. The act clarifies that vehicles traveling over a posted bridge are subject to a penalty only if they exceed the posted weight limitations.

The sections of this act that change requirements for the retired Highway Patrol plate, allow assessment of overweight penalties only to the extent that a vehicle is overweight, clarify that civil penalties go to the Civil Penalty and Forfeiture Fund, and allow proceeds from lease of property that is part of the VIPER project to be used solely for the VIPER project, became effective July 31, 2009. The remainder of the act became effective October 1, 2009, and applies to civil penalties assessed and offenses committed on or after that date. (WGR)

Regulation of Golf Carts by Local Governments

S.L. 2009-459 (HB 121). See **Local Government**.

Sex Offender Can't Drive Bus with Children

S.L. 2009-491 (HB 1117) prohibits sex offenders from operating commercial passenger vehicles or school buses by amending the law as follows:

- The Division of Motor Vehicles may not issue or renew a commercial drivers license (CDL), or issue a commercial learner's permit with a P (vehicles carrying passengers) or S (school bus) endorsement to a person registered under the Sex Offender and Public Protection Registry.
- Anyone convicted of an offense that requires registration under the Sex Offender and Public Protection Registry is disqualified from driving a commercial motor vehicle that requires a CDL with a P or S endorsement for as long as that person is required to be registered. However, any person who is on the registry and who has a valid CDL with a P or S endorsement on December 1, 2009, will not be disqualified until the license expires, as long as the person does not commit a subsequent registerable offense.
- The Division of Motor Vehicles is required to revoke a CDL with a P or S endorsement of any person convicted of a registerable offense on or after December 1, 2009. The person is allowed to apply for a new CDL but is disqualified from obtaining a P or S endorsement.
- Any person who operates a commercial passenger vehicle or school bus and does not have a CDL with P or S endorsement because of a conviction of a registerable offense is guilty of a Class F felony.

This act became effective December 1, 2009. It applies to persons registering under the sex offender and public protection registry on or after that date and persons who were registered before that date and continue to be registered on or after that date. The criminal penalties enacted under this act apply to offenses occurring on or after December 1, 2009. (WGR)

Division of Motor Vehicles Handicap Placard Enforcement

S.L. 2009-493 (SB 203) changes the handicapped placard law to require:

- The expiration date on the placard to be visible from at least 20 feet.
- The placard to include the month and year of expiration.
- The Division of Motor Vehicles (DMV) to issue a placard registration card with each placard issued to a handicapped person.
- The placard registration card to include the name and address of the person to whom the placard is issued, the placard number, and an expiration date.
- That the registration card be in the vehicle in which the placard is being used, and that the person to whom the placard is issued be the operator or a passenger in the vehicle in which the placard is displayed.

The act also changes the law governing special identification cards to require DMV to issue a free special identification card to a licensed driver whose driver's license is cancelled by DMV as a result of a physical or mental disability or disease.

The portion of the act affecting handicapped placards became effective January 1, 2010, and applies to placards issues or renewed on or after that date. The portion of the act affecting special identification cards became effective August 26, 2009. (GSP)

Allowing Inoperable Blue Lights on Specially Constructed Vehicles Not Used For General Daily Transportation

S.L. 2009-526, Sec. 1 (HB 191, Sec. 1) and S.L. 2009-550, Sec. 3 (HB 274, Sec. 3) permit the display of an inoperable blue light on specially constructed vehicles used primarily for participation in shows, exhibitions, parades, or holiday/weekend activities and not used for general daily transportation.

S.L. 2009-526, Sec. 1, became effective August 26, 2009. S.L. 2009-550, Sec. 3, became effective August 28, 2009. (WP)

Clarify Closest Market

S.L. 2009-531 (SB 295) limits an exemption from weight restrictions on vehicles transporting agricultural crops from farm to market by making it applicable only from the farm where the crop is grown to any market that is within 150 miles of the farm.

Under general law applicable to motor vehicles, the maximum single-axle weight of a vehicle operating without a special permit is 20,000 pounds, the maximum tandem-axle weight is 38,000 pounds, and the maximum gross weight is dependant on the number of axles and the distance between them but cannot be greater than 80,000 pounds. The general law provides an exception to the weight restrictions for vehicles hauling agricultural crops from farm to the closest market. The single-axle weight limit is up to 22,000 pounds, the tandem-axle weight limit is up to 42,000 pounds, and the gross weight limit is up to 90,000 pounds. However, the vehicle is not authorized to operate on interstates or exceed posted bridge weight limits. This act makes the weight exemption for vehicles hauling agricultural crops from farm to market applicable only from the farm to any market within 150 miles of the originating farm.

This act became effective December 1, 2009, and applies to offenses occurring on or after that date. (WGR)

Public Transportation and Rail

Department of Transportation Participation in Fixed Rail Projects

S.L. 2009-409 (HB 1005) authorizes the Department of Transportation to use State funds to fund fixed guideway projects that do not include federal funds and that were developed by: The Department; a Regional Public Transportation Authority duly created and existing pursuant to Article 26 of Chapter 160A; a Regional Transportation Authority duly created and existing pursuant to Article 27 of Chapter 160A; or a unit of local government. In addition, the act provides that State funds may be used to pay administrative costs incurred by the Department while participating in such fixed guideway projects.

This act became effective July 1, 2009. (GSP)

Congestion Relief / Intermodal Transport Fund

S.L. 2009-527, Sec. 1 (HB 148, Sec. 1) creates the Congestion Relief and Intermodal 21st Century Transportation Fund and authorizes the Secretary of Transportation, after consultation with the Board of Transportation, to make grants from the fund to the following:

- Local governments and transportation authorities for public transportation. The grant requires (i) approval of the application by the Metropolitan Planning Organizations covering the applicant; and (ii) a transit plan covering various planning policies and housing needs. The grant cannot exceed 25% of project cost.
- Short line railroads to assist in economic development and access to ports and military installations. The grant cannot exceed 50% of project cost and total annual grants limited to $5 million.
- Railroads to assist in rail improvements, intermodal, or multimodal facilities or restorations to (i) serve ports, military installations, inland ports, or (ii) improve rail infrastructure to reduce or mitigate truck traffic on the highway system. The grant cannot exceed 50% of project cost, and total annual grants are limited to $10 million.

- State ports for terminal railroads and improved access to military facilities and Intermodal or multimodal facilities. The grant cannot exceed 50% of project cost, and total annual grants are limited to $10 million.
- Expansion of intercity passenger rail service.

See the **Finance** chapter for a summary of the remaining tax-related sections of this act. This section became effective August 27, 2009. (GSP)

Toll Roads

Turnpike GAP Funding and Debt

S.L. 2009-56 (SB 750) specifies that the funds appropriated from the Highway Trust Fund to the Turnpike Authority to service the debt on bonds issued for specified Turnpike Projects are not subject to the equity distribution formula. The act also allows a refunding bond issued by the Turnpike Authority to have a longer maturity date if one is necessary to generate sufficient revenues to retire the refunding bonds and any other outstanding indebtedness issued for the financed Turnpike Project. It also makes a corresponding change to allow a lease of the Project property to the Department of Transportation for a period longer than 40 years.

This act became effective June 5, 2009. (GSP)

Department of Transportation Savings/Transfer Turnpike Authority

S.L. 2009-343 (HB 1617) transfers the North Carolina Turnpike Authority to the Department of Transportation to conserve expenditures and improve efficiency. The Authority was created to construct, operate, and maintain toll roads and bridges in the State. Prior to this act, it was located in the Department of Transportation for administrative purposes but exercised its powers independently. This act puts the Authority under the direct supervision of the Secretary of Transportation and also allows members of the Board of Transportation to serve as members of the Authority Board without limitation.

This act became effective July 27, 2009. (WGR)

Miscellaneous

Department of Crime Control and Public Safety Wrecker Service Fee Rules

S.L. 2009-461 (SB 69) makes void and unenforceable parts of a rule adopted by the Department of Crime Control and Public Safety regarding wrecker services and directs the Department to amend the rule consistent with this act.

The Secretary of Crime Control and Public Safety is authorized to make all necessary orders, rules, and regulations for the organization, assignment and conduct of the State Highway Patrol, subject to approval of the Governor. In 2008, the Secretary adopted a rule governing the rotation of wrecker services used by the State Highway Patrol. The rule included the following requirements related to fees:

- Towing, storage, and related fees charged on a Highway Patrol rotation call may not be greater than fees charged for the same service for non-rotation calls.
- A price list must be established and kept on file, and resubmission of the price list is limited to an annual open enrollment period.

- Vehicle storage fees may not exceed the $10 per day amount set by statute for vehicles seized under the DWI forfeiture provisions.
- Night and weekend fees may not exceed regular business hour fees by more than 10%.
- Operators with fees that exceed the median fee in the area by more than 15% will be disqualified from the rotation system.
- Fees must remain in effect for the calendar year in which they are approved and may not be increased.

This act provides that the rule is void and unenforceable to the extent that it:

- Limits submission of applications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.
- Limits vehicle storage fees to the statutory amount set for vehicles seized under the DWI forfeiture provision.
- Requires that fees not exceed the median fee in the area by 15%.

The act provides that the rule may require the wrecker service, when responding to a rotation wrecker call, to charge reasonable fees that do not exceed the charges for similar nonrotation service calls. The Secretary of Crime Control and Public Safety is directed to amend the rule to conform to the requirements of this act.

The act also amends the statutory duties of the State Highway Patrol to require the Patrol to maintain a rotation wrecker list of wrecker services. The wrecker services on the list must agree in writing to impose reasonable charges for work performed in removing vehicles from the roadways and present one bill to the owner or operator of the towed vehicle. The wrecker services may not charge fees for a rotation call that are greater than fees charged for a non-rotation call.

This act became effective August 7, 2009. (WGR)

Studies

Joint Legislative Transportation Oversight Committee Study/ Driver Distraction

S.L. 2009-135, Sec. 3 (HB 9, Sec. 3) directs the Joint Legislative Transportation Oversight Committee to identify and study the leading causes of driver inattention or distraction, the risks posed by driver inattention or distraction, and any methods that might be used to manage those driver distractions and promote highway safety. The Committee is directed to report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010.

This section became effective December 1, 2009. (GSP)

Joint Legislative Transportation Oversight Committee Study/ Feasibility of Assessing a Fee for Providing Traffic Control by the State Highway Patrol or the Department of Transportation at Special Events

S.L. 2009-451, Sec. 25.9 (SB 202, Sec. 25.9) directs the Joint Legislative Transportation Oversight Committee to study the feasibility of assessing a fee for services provided by the State Highway Patrol or the Department of Transportation for certain special events. The Committee is

directed to make a report to the 2010 General Session of the 2009 General Assembly by April 1, 2010.

This section became effective July 1, 2009. (KQ)

Joint Legislative Transportation Oversight Committee Study/ Special Registration Plates

S.L. 2009-456, Sec. 2 (HB 67, Sec. 2) directs the Joint Legislative Transportation Oversight Committee, in consultation with the Revenue Laws Study Committee, to study the authorization of special registration plates under Part 5 of Article 3 of Chapter 20 of the General Statutes and the issuance of special registration plates with a design that is not a "First in Flight" design. As part of its study, the Division of Motor Vehicles is directed to report to the Committee the special registration plates that have been authorized but for which the Division has not received the minimum 300 applications. It is the intent of the General Assembly to repeal the authorization for a special plate that has not received at least 300 applications within two years of its authorization.

This section became effective August 7, 2009. (GSP)

Legislative Research Commission to Study Bicycle Laws

S.L. 2009-574, Sec. 2.69 (HB 945, Sec. 2.69) authorizes the Legislative Research Commission to study laws related to the operation of bicycles. The Commission may report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon convening.

This section became effective September 10, 2009. (KQ)

Additional Joint Legislative Transportation Oversight Committee Studies

S.L. 2009-574, Part IV (HB 945, Part IV) authorizes the Joint Legislative Transportation Oversight Committee to study the following topics:

- Whether to require the Division of Motor Vehicles to place the North Carolina tourism website, visitnc.com, on the State's registration plates and whether to require all license plates issued by the Division of Motor Vehicles to have a "First in Flight" background, including all specialized license plates.
- Issues related to the authorization of special license plates and the issuance of special registration plates with a design that is not a "First in Flight" design.
- Issues related to the State's method for distributing transportation funds.
- Ways to reduce construction expense by considering life cycle cost, durability, environmental impact, sustainability, longevity, and maintenance costs when selecting project pavement types.

This part became effective September 10, 2009. (KQ)

Department of Transportation to Study the Feasibility of Tolling All Interstate Highways Entering the State in Cooperation with Each Surrounding State

S.L. 2009-574, Part XXXVI (HB 945, Part XXXVI) authorizes the Department of Transportation to study the feasibility of tolling all interstate highways entering the State. The

Department is directed to report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by March 1, 2010.

This part became effective September 10, 2009. (KQ)

Department of Transportation to Study Location of Southeast High-Speed Rail Corridor from Henderson to Roanoke Rapids in Conjunction with U.S. 158 Improvements

S.L. 2009-574, Part XXXVII (HB 945, Part XXXVII) authorizes the Department of Transportation Rail Division to study and consider locating any Raleigh to Richmond southeast high-speed passenger rail improvements in a corridor from Henderson to Roanoke Rapids, and in the same corridor as the planned four-lane freeway location of U.S. 158. The Department is directed to make a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by March 1, 2010.

This part became effective September 10, 2009. (KQ)

Chapter 24
Utilities

Heather Fennell (HF), Steve Rose (SR)

Enacted Legislation

Broadband Service Providers

S.L. 2009-80 (HB 135) amends G.S. 62-113 concerning the terms and conditions of public utility franchises. The act provides that a broadband service provider that provides telephone service within a defined service territory or franchise area may, in any area contiguous to its defined territory, provide telephone service to a customer as an incident to broadband services. This provision would apply only when the adjacent incumbent telecommunications or cable provider is not providing broadband service to the customer.

This act became effective June 11, 2009. (SR)

Prepaid Wireless Telephone Service/Sunset

S.L. 2009-90 (HB 1027) extends the moratorium on the collection of the 911 fee from prepaid wireless providers through the 2010 calendar year.

This act became effective June 11, 2009. (HF)

Utilities/Carrier of Last Resort

S.L. 2009-202 (SB 889) allows carriers of last resort (COLR) the authority to meet its COLR obligations using any available technology that currently allows access to the local switched network, including traditional phone service, wireless, and VoIP (Voice over internet protocol).

The act also allows a provider to be relieved of its COLR obligations for an area, if that subdivision or other area has entered into an agreement with a communications provider that precludes the COLR from offering service in that area. The provider must notify the appropriate State agency that it is no longer the carrier of last resort, and the communications provider that is offering service in the area must notify purchasers or real property in the area of the existence of the agreement to offer service. The appropriate State agency may re-designate the provider as the COLR if the communications provider party to the agreement is no longer willing or able to provide service to the area.

A provider also may be granted a waiver of its COLR responsibilities if it makes a showing to the appropriate State agency of all of the following:

- Providing service in the area would be inequitable or unduly burdensome.
- One or more alternative service providers exist.
- Granting the waiver is in the public interest.

This act became effective June 26, 2009. (HF)

Consumer Choice and Investment Act of 2009

S.L. 2009-238 (HB 1180) allows incumbent local telephone providers (ILECs) open to competition from competing local telephone providers (CLPs), and to the extent applicable CLPs, to elect to participate in an alternative form of regulation. Under the alternative form of regulation, an electing provider is no longer required to file tariffs and certain reports, including service line, access line, and service quality reports with the Utilities Commission. ILECs may not

elect regulation under the new plan unless they commit to providing stand-alone basic service to rural customers at rates comparable to rates charged to urban customers. Once an ILEC elects regulation under the plan, it may not increase the rates for stand-alone basic service by more than the GDP price index unless otherwise authorized by the Utilities Commission. For those ILECs and CLPs that elect regulation under the plan, the Utilities Commission retains jurisdiction over certain federal requirements of providers, telecommunications relay services, Lifeline or Link Up programs, universal service programs, carrier of last resort obligations, and the authority to manager numbering resources. Electing regulation under the plan does not prevent a customer from seeking assistance from the Public Staff of the Utilities Commission and electing providers must inform customer complainants that the customer may contact the Public Staff.

This act became effective June 30, 2009. (HF)

Utilities/Regulation of Pole Attachments

S.L. 2009-278 (SB 357) requires municipalities and certain membership corporations to permit communications providers, including providers of telephone service, broadband service, or cable service, to use their poles, ducts, and conduits at reasonable rates and conditions under negotiated agreements. A request to a municipality or membership corporation to use its poles, ducts, or conduits may be denied only if there is insufficient capacity, or if the attachment would impact the safety or reliability of the pole, duct, or conduit. If the parties are unable to reach an agreement to allow attachment, either party may bring an action in Business Court. The Business Court is required to establish a procedural schedule designed to resolve the action in a six-month period. All attachments must comply with applicable safety rules and regulations. The act provides a procedure for municipalities and membership corporations to demand compliance with safety rules and regulation, and authority to take remedial action for any noncompliant attachment of a communication service provider.

This act became effective July 10, 2009. (HF)

Utilities/Collectors/Debt Collection

S.L. 2009-302 (HB 1330) See **Commercial Law and Consumer Protection.**

Amend Certain Electricity Generation Laws

S.L. 2009-390 (SB 1004) does the following:

- Shortens the time within which the Utilities Commission must render a decision on a petition for a certificate of public convenience and necessity to 45 days from the filing of the petition, where the certificate is for the construction of a natural gas-fueled generating unit, the construction of which will result in the closure of all coal-fired units at the site, thus allowing compliance with reduced SO2 emissions requirements.
- Authorizes the Utilities Commission to allow an electric public utility to recover operating costs and investment in a "carbon offset facility" through the savings in the fuel and fuel related costs realized by the utility, because it will not be operating or will reduce operation of carbon fuel facilities as a result of the construction or acquisition of the carbon offset facility. A "carbon offset facility" means an electric generating facility that generates electricity using solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy, and the electricity or equivalent BTUs produced will displace electric generation to the extent that greenhouse gases will be reduced.
- Bring certain dams used in connection with electric generating facilities, not including those associated with nuclear generating facilities under the State Dam Safety Act.

This act became effective July 31, 2009, except for the provisions involving the State Dam Safety Act, which became effective January 1, 2010. (SR)

Studies

Joint Legislative Utility Review Committee Studies

S.L. 2009-574, Sec. 8 (HB 945, Sec. 8) allows the Joint Legislative Utility Review Committee to study the following:

- The feasibility and suitability of feed-in rates to be paid to renewable energy electricity producers by electric power suppliers.
- Electric public utilities' purchase and use of coal that is extracted using mountaintop removal coal mining.
- Ways to establish a system of permits to be issued by the Department of Environment and Natural Resources for the siting of wind energy facilities.
- The creation of NC Saves Energy as an independent energy efficiency administrator for the State to administer energy efficiency and energy conservation programs and programs to promote the sustainable use of energy.
- The possibility of extending the standards governing energy efficiency and water use for major facility construction and renovation projects involving State, university, and community college buildings to major facility construction and renovation projects involving buildings of entities that receive State funding.
- The necessity of requiring utilities to notify property owners of rights-of-way or adjacent land prior to applying pesticides to the rights-of-way.

This section became effective September 10, 2009. (HF)

Chapter 25
Vetoed Legislation

Kory Goldsmith (KG)

Clarify Legislative Confidentiality

HB 104 would have made the following changes to Article 17 of Chapter 120 of the General Statutes (Confidentiality of Legislative Communications):

- Documents submitted to a legislator from another person are confidential and are not public records.
- Information and drafting requests made by a legislative employee to an employee in another agency would be confidential. The request and any documents submitted or created as a result of the request would not be considered public records. All requests for fiscal notes, assistance with program evaluations, and research and drafting requests would have to be marked "confidential", and the document is not a public record.
- Clarify that a court's authority to compel the testimony of a legislative employee regarding confidential communications or matters related to the legislative process is limited by North Carolina's speech and debate clause, the common law of legislative immunity, and the statute related to the confidentiality of redistricting communications.
- Make it a Class 3 misdemeanor for a person who is not currently a legislative employee to breach legislative confidentiality.

The bill was ratified on August 11, 2009. The Governor vetoed the bill on September 10, 2009, stating that it added new restrictions on public access to documents and information, as well as unfairly and unequally subjected State employees to criminal penalties. The Governor issued an order to reconvene the General Assembly on September 18, 2009, but rescinded the order on September 16, 2009, because the House and the Senate indicated a reconvened session was unnecessary. The General Assembly may consider overriding the veto of House Bill 104 during the 2010 Regular Session. (KG)

INDEX

House Bills

Senate Bills

Session Laws