SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2010

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

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2010 REGULAR SESSION

2010

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
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To the Members of the 2010 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 2010 Regular Session. Most local acts are not analyzed in this publication. Significant appropriations matters related to the subject area specified also are 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: Denise Huntley Adams, Dee Atkinson, Cindy Avrette, Susan Barham, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Judy Collier, Tim Dodge, Bill Gilkeson, Kory Goldsmith, Trina Griffin, Tim Hovis, Jeff Hudson, Sara Kamprath, Brad Krehely, Mariah Matheson, Theresa Matula, Kara McCraw, Jennifer McGinnis, Joe Moore, Jennifer Mundt, Shawn Parker, William Patterson, Howard Alan Pell, Giles S. Perry, Ben Popkin, Kelly Quick, Wendy Graf Ray, Barbara Riley, Steve Rose, and Susan Sitze. Heather Fennell is chief editor of this year's publication, and Brenda Carter is co-editor. Dan Ettefagh, of the Bill Drafting Division, and Martha Walston, of the Fiscal Research Division, also contributed to this document. 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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Mariah Matheson (MM), Howard Alan Pell (HAP), Barbara Riley (BR), Steve Rose (SR)

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Fishery Management Plan Supplements

S.L. 2010-15 (HB 1710). See **Environment and Natural Resources**.

Winston-Salem/Ashe Fox Trapping/Greene Hunting

S.L. 2010-82 (HB 1893) amends the fox trapping laws for Winston-Salem and Ashe County, and repeals certain hunting laws in Greene County.

Winston-Salem

The act provides an open season for the taking of foxes by trapping with cages in the city of Winston-Salem. Trapping with cages will be allowed only during the trapping season set by the Wildlife Resource Commission each year. There are no tagging requirements before or after the sale of foxes taken and no season bag limits.

Ashe County

The act makes three changes to fox hunting in Ashe County:

- Extends the fox trapping season to November 1 through November 28.
- Removes specific requirements on leghold traps.
- Removes the previously set expiration date of September 30, 2010.

Greene County

The act repeals two older session laws concerning hunting in Greene County:

- Repeals Section 3 of S.L. 1975-219, which prohibited hunting foxes with firearms during the two week deer season, as the two week deer season no longer exists.
- Repeals Section 1 of S.L. 1987-132 and removes Greene County from S.L. 1985-471, which prohibits the use of firearms from or on a public road or right-of-way. Hunting from or on a public road or right-of-way in Greene County remains prohibited by S.L. 2006-12.

The act became effective July 9, 2010. (MM)

Animal Euthanasia Technicians

S.L. 2010-127 (HB 1741) was a recommendation of the General Statutes Commission. The act allows animal shelters owned, operated, or maintained by a unit of local government or under contract with a unit of local government to register with the North Carolina Department of Health and Human Services (DHHS) in order to obtain euthanasia drugs directly from the manufacturer. Shelters registering with DHHS also will be required to register with the federal Drug Enforcement Agency. The persons who may order euthanasia drugs for a shelter are limited to the shelter manager, chief operating officer, or a licensed veterinarian. Any properly certified animal euthanasia technicians may administer the drugs to dogs and cats lawfully held by the shelter, but only on the premises of the shelter.

The act clarifies the Board of Agriculture's authority to adopt rules for the certification of a euthanasia technicians. Grounds for disciplinary actions include violation of the Animal Welfare Act or the Board's rules, conviction of any felony or lesser offense involving animal cruelty or related to being a euthanasia technician, falsifying an application, or otherwise becoming ineligible for certification. The Department of Agriculture and Consumer Services (DACS) is authorized to deny, revoke, or suspend a euthanasia technician's certification for conviction of a drug-related felony even if the Board has not included that ground in its rules. The act also requires applicants for certification as a euthanasia technician to provide the DACS with fingerprints and consent for the DACS to obtain a criminal record check from the Department of Justice. Refusal is grounds to deny the application. The Department of Justice is authorized to provide criminal record checks to DACS for applicants for certification as a euthanasia technician and to impose the requisite fee.

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

Suspension and Revocation of Fishing Licenses

S.L. 2010-145 (HB 1714). See **Environment and Natural Resources**.

Conserve and Protect Agricultural Water Resources

S.L. 2010-149 (HB 1748). See **Environment and Natural Resources**.

Spay and Neuter Account

S.L. 2010-152, Sec. 11.4 (SB 897, Sec. 11.4) transfers the Spay/Neuter Program and the Spay/Neuter Account from the Department of Health and Human Services to the Department of Agriculture and Consumer Services (Department). The section also:

- Eliminates the requirement that 20¢ of the rabies tag fee go to the Spay/Neuter Account.
- Increases the cost of the Animal Lovers special license plate by $10.
- Eliminates a provision that stated that if the total amount generated by the rabies tag fee allocation for rabies education and prevention (5¢ per tag) was less than $47,500, then the difference between the amount generated and $47,500 could be used from the Spay/Neuter Account for rabies education and prevention purposes.
- Changes a requirement that 20% of the Account shall be used to develop the statewide education program component of the Spay/Neuter Program. The amendment provides that the Department "may" use "up to" 20% for that purpose.

This section became effective July 1, 2010. (HAP)

Coyote Controls

S.L. 2010-156 (HB 1824) authorizes a person who has been issued a depredation permit for coyotes to use a Collarum™ trap, or similar trap approved by the Wildlife Resources Commission (WRC), solely for the purpose of taking coyotes under that permit. The person authorized to use these traps under the depredation permit is required to provide to the Commission information related to the effectiveness and efficiency of the trap. To minimize the risk of harm to non-targeted species, any trap set must be attended daily and any non-target animal captured must be released.

The provisions regarding use of the traps becomes effective October 1, 2010. Livestock and poultry owners will be issued a depredation permit for coyotes upon request, and the WRC is directed to adopt rules to implement the provision on or before that date.

The remainder of this act became effective on July 22, 2010. (MM)

Studies

Fur-Bearer and Fox Management

S.L. 2010-152, Sec. 2.9 (SB 900, Sec. 2.9) authorizes the Legislative Research Commission to study the effectiveness of the North Carolina Wildlife Resources Commission's implementation of laws relating to its capability for studying fox and fur-bearer population, implementation of management methods, and imposition of controls designed to produce optimum fox and fur-bearer populations in the various areas of the State.

This section became effective July 22, 2010. (HAP)

Ownerless Dogs and Cats/Commercial Dog Breeding

S.L. 2010-152, Sec. 2.12 (SB 900, Sec. 2.12) authorizes the Legislative Research Commission to study issues related to ownerless dogs and cats, and the State's role in ensuring the humane treatment of dogs and cats by breeders, shelters, and other facilities that house dogs and cats.

This section became effective July 22, 2010. (SR)

Insurance Coverage for Fresh Produce Growers

S.L. 2010-152, Sec. 2.15 (SB 900, Sec. 2.15) authorizes the Legislative Research Commission to study the issue of adequate insurance coverage options for fresh produce growers.

This section became effective July 22, 2010. (BR)

Study Impact of Exempting Wildlife Resources Commission and Marine Fisheries Commission from the Legislative Disapproval Process

S.L. 2010-152, Sec. 11.1 (SB 900, Sec. 11.1) authorizes the Joint Legislative Administrative Procedure Oversight Committee to study the impact of exempting the Wildlife Resources Commission and the Marine Fisheries Commission from the legislative disapproval process under the Administrative Procedure Act. In conducting the study, the Committee may consider the number of bills introduced since 2003 to disapprove rules adopted by either of the two Commissions, the effect of the delayed effective dates on the enforcement capabilities of the two Commissions, and alternatives available to the public for objecting to rules adopted by either of the two Commissions. The Joint Legislative Administrative Procedure Oversight Committee may report its findings and recommendations to the 2011 General Assembly.

This section became effective July 22, 2010. (SR)

Extend the North Carolina Zoological Park Funding and Organization Study Committee

S.L. 2010-152, Part XXI (SB 900, Part XXI). See **Environment and Natural Resources.**

Chapter 2
Alcoholic Beverage Control

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

Enacted Legislation

Modernization of the State ABC System

S.L. 2010-122 (HB 1717) makes a number of changes to the State's ABC laws, many of which were recommended by a Joint Legislative Study Committee on Alcoholic Beverage Control issues.

Ethics. – The act makes it unlawful for contractors or suppliers who have or seek to have a contract with the ABC Commission (Commission) or local ABC board to make gifts or to give favors to any Commission or local board officers or employees and also unlawful for an officer or employee to accept such gifts. The act makes the Commission subject to the State Ethics Act, which prohibits the use of public position for private gain, prohibits certain gifts and other compensation, prohibits the use of information for private gain, and sets other rules of conduct for public servants. The act provides specific guidelines pertaining to conflicts of interest for local ABC boards – prohibiting a local board member from knowingly using his or her position in a manner that would result in financial benefit to the local board member, to his or her spouse or near relative, or to any business with which the local board member is associated. The act prohibits a local board member from improperly using or disclosing any confidential information, and imposes an affirmative duty on every local board member to promptly disclose in writing to the local board any actual or potential conflict of interest.

Each local ABC board must adopt a policy containing a code of ethics consistent with statutory provisions concerning conflicts of interests and gifts. Each local board member must receive a minimum of 2 hours of ethics education within 12 months after initial appointment to the board, and again within 12 months after each subsequent appointment to the office. The education may be provided by the Commission or by some other qualified source approved by the Commission. A local board may require appropriate ethics training and education for its employees. The Commission is required to develop a model ethics polity that local ABC boards may adopt in compliance with the requirements of this act.

Performance Standards. – The act requires the Commission to establish performance standards, and to ensure that all local boards comply with those standards by conducting regular or special audits, performance evaluations, monitoring ABC law enforcement efforts, or taking other measures including inspections by Commission auditors or alcohol law enforcement agents. When a local board fails to meet established performance standards, the Commission must meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority will, in consultation with the Commission, develop and deliver a performance improvement plan to the local board. The plan will include recommendations for improved performance, and state a period of time in which improvements are to occur and what actions will be taken by the Commission if performance standards are not met within the prescribed time limits. The appointing authority may allow no more than 12 months for the local board to implement and show improvement under the plan; however, upon a showing of good cause and in consultation with the Commission, the appointing authority may allow up to an additional six-month period of time. If the Commission determines that the established performance standards cannot be met after a performance improvement plan has been implemented and adequate time has been given, the Commission must take appropriate action to avoid insolvency. The Commission has authority to close the local board or one or more of its stores, or to merge the local board with another local board in order to maintain solvency. The

Commission also has authority to seize the assets of the local board and liquidate assets necessary to satisfy debt and maintain solvency of the local board.

The act gives the Commission authority to adopt rules to establish the performance standards for local boards, including standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service. The Commission also has authority to adopt rules setting mandatory training requirements for local board members, finance officers, and general managers, and to provide for the purchase of liquor from another ABC board by mixed beverage permittees when an ABC system becomes insolvent or closes. Local ABC boards must comply with all rules adopted by the Commission pursuant to its authority, and meet all standards set by the Commission for performance and training. Failure to comply with Commission rules will be grounds for removal.

ABC Law Enforcement. – The act limits the number of officers that a contracting law enforcement agency may designate to conduct inspections of ABC-licensed premises. Under existing law, instead of hiring local ABC officers a local board may contract to pay its enforcement funds to a local law enforcement agency for enforcement of the ABC laws within the agency's territorial jurisdiction. Officers of contracting law enforcement agencies have the same authority to inspect that an ABC officer employed by that local board would have, including viewing the entire premises and examining the books and records of the permittee. The act requires that a contracting law enforcement agency designate not more than five officers to conduct ABC inspections. The act preserves pre-existing local acts applicable to Greensboro and Charlotte.

The act requires local board ABC officers and law enforcement agencies subject to enforcement agreements with a local board to provide monthly reports to the local board, including information on the number of arrests made for ABC law and controlled substance violations and other violations at ABC-permitted outlets and other locations, the number of agencies assisted with ABC law or controlled substance related matters, and the number of alcohol education and responsible server programs presented. The local board must submit a copy of the report to its appointing authority and to the Commission, and the Commission will publish the information on a public Internet website. The reporting requirements become effective January 1, 2011.

The act makes a conforming change to the law pertaining to local ABC officers, making it clear that designated officers of agencies that contract with local boards for enforcement of the ABC laws are subject to statutory provisions concerning discharge from those duties.

ABC Elections. – The act increases the threshold for cities to qualify for an ABC store election by requiring that a city have at least 1,000 registered voters. The previous threshold was 500 registered voters.

The act allows any city that has at least 500 registered voters to hold a mixed beverage election. It eliminates a requirement that the city already operate a city ABC store in order to hold the mixed beverage election or if not, the county either operates an ABC store or has already held a mixed beverage election and the vote was against the sale of mixed beverages.

Local ABC Boards. – The act provides that a local ABC board may consist of three or five members and provides for staggered terms.

Mission: The act defines the mission of local ABC boards and their employees: Controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores.

Compensation: The act limits the compensation of local ABC board members to not more than $150 per meeting, unless a different level of monetary compensation is approved by the board's appointing authority. If a different level of compensation is approved, the appointing authority is required to provide written notice to the Commission.

The act limits the compensation of general managers of local ABC boards. The salary authorized for the board's general manager may not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated. A different level of monetary compensation may be approved by the board's appointing authority. If a different level of compensation is approved, the appointing

authority must provide written notice to the Commission. No employee of a local board may receive a salary in excess of the amount authorized for the salary of the general manager. The salary provisions become effective October 1, 2010, and apply to general managers and employees hired on or after that date.

Members and employees of local ABC boards may be reimbursed for travel on official business in accordance with the statutory travel allowances of State officers and employees. With approval of the appointing authority, a local board may adopt a travel policy that conforms to the travel policy of the appointing authority. The local board must annually provide to the Commission a copy of its travel policy along with the appointing authority's written confirmation of approval. Excess expenses not covered by the local board's travel policy may be paid only with written authorization of the appointing authority's finance officer, and the local board must submit a copy of the authorization to the Commission within 30 days of approval.

Bonding: The act increases the minimum amount of the bond required for local ABC board members and for the employees designated as the general manager or finance officer of the local board, raising it from $5,000 to $50,000. No board member will be exempt from the requirement, and the appointing authority may require a higher bond amount for any board member or employee who handles board funds. The act also increases the minimum amount of the bond required for ABC store managers, raising it from $5,000 to $50,000. An appointing authority may require a bond that exceeds the minimum amount.

Nepotism: The act prohibits members of an immediate family or members of the same household from being employed within a local board if the employment will result in one family or household member supervising another, or if one family or household member will occupy a position that has influence over the employment, promotion, or salary administration of another. The provision applies to local board members and employees. The policy becomes effective October 1, 2010, and applies to employees hired on or after that date.

The provisions regarding the appointment and organization of local ABC boards become effective October 1, 2011, and are applicable to all local ABC boards, notwithstanding any local acts that may provide otherwise.

Financial Operations of Local Boards. – The finance officer is the person responsible for keeping the accounts of the local board, including receiving and depositing receipts and disbursing funds. The general manager is the person responsible for the oversight of daily operations of the ABC system. The act requires the local board to designate an employee other than the general manager to be the finance officer of the local board, and sets out the duties and powers of the finance officer. For good cause shown, the Commission may allow the board's general manager also to be the finance officer.

A local board must operate under an annual balanced budget in accordance with provisions in the act. All monies received and expended by a local board must be included in the budget, and no local board may expend any monies except in accordance with the budget. The general manager of the local board, as budget officer, will prepare a budget for consideration by the local board. The proposed budget must be submitted to the local board, its appointing authority, and the Commission by June 1 and a copy made available for public inspection. Before adopting the budget, the board must hold a public hearing. The act establishes specific directions and limitations that a local board must comply with in adopting its budget. Once the budget is adopted, it must be filed with the board's finance officer and budget officer, the board's appointing authority, and the Commission. The act provides for amendments to an adopted budget and for an interim budget in case adoption of the budget is delayed until after the start of the fiscal year. Each local board must establish and maintain an accounting system designed to show in detail its assets, liabilities, revenues, and expenditures. The act contains specific provisions relative to incurring obligations, disbursements, and local board approval of bills, invoices, or claims. All checks or drafts must be signed by the finance officer or a properly designated deputy finance officer, and countersigned by the chair of the local board or the general manager, except where the requirement for dual signatures is waived by the Commission. Audits and reports currently required to be submitted to the Commission also must

be submitted to the local board's appointing authority. The act gives the Commission specific authority to inquire into and investigate the internal control procedures of a local board, and to require any modifications necessary or desirable to prevent the embezzlement or mishandling of public monies. The finance officer and sureties on the official bond will be liable for any sums committed or disbursed in violation of the law. The provisions pertaining to financial operations of local boards become effective May 1, 2011, and apply to local board fiscal years beginning July 1, 2011. The provisions apply to all local boards, notwithstanding any local acts.

Removal of Board Members. – The act prohibits the Commission or its individual members from attempting to coerce any appointing authority to appoint a particular person as a member of a local board, or attempting to coerce a local board to employ a particular applicant. It gives the Commission authority to remove any member or employee of a local board for disqualification under the law, violation of the ABC laws, failure to complete required training, or engaging in conduct constituting moral turpitude or which brings the local board of the ABC system into disrepute. The act sets out a removal process that requires written findings of fact upon which the decision for removal is based, and provides for an informal removal hearing before the Commission. The Commission has authority to discharge the board member or employee if two-thirds of the Commission's members vote for removal. The Commission has the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission, and the Commission's decision is final. The local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review is abuse of discretion, and the sole remedy is reinstatement with back pay. Awards for back pay will be paid by the local board from which the board member or employee was removed. These provisions apply to all local boards.

The act also amends the law concerning judicial authority to remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent who violates the State's alcohol laws or commits any felony. The act makes the discharge provision applicable to local law enforcement officers who serve as the designated officer of an agency which holds a contract to enforce the ABC laws for a local board, giving the judge authority to prohibit the officer from being designated as an officer that enforces the ABC law for a period up to three years.

Wineries. – The act amends the law concerning the obligations of the purchaser of a winery, making it clear that the purchaser as well as any successor to the rights of a winery is obligated to all the terms and conditions of an agreement in effect on the date of the purchase or other acquisition of the right to distribute a brand. This provision became effective September 15, 2010, and applies to all existing franchise agreements. A supplier's shipment of wine to a wholesaler in this State following the effective date will constitute acceptance by the supplier of the terms of the act and be incorporated into the agreement between the supplier and wholesaler. The provision will not apply to any administrative action pending before the Commission or to pending litigation or claims that accrued before September 15, 2010.

The act also changes the definition of a winery for purposes of the Wine Franchise Act. Under existing law, a winery means the holder of an unfortified winery permit, fortified winery permit, limited winery permit, or nonresident wine vendor permit who sells at least 1,000 cases of wine in North Carolina each year; the act increases the number of cases from 1,000 cases annually to 1,250 cases annually. This provision became effective September 15, 2010.

Occupational Licensing Board Change. – The act creates an exception to the law that prohibits occupational licensing boards from requiring that an individual be more than 18 years of age as a condition for receiving a license. The exception applies to certifications issued by the Criminal Justice Education and Training Standards Commission and the North Carolina Sheriff's Education and Training Standards Commission. This provision became effective when the act became law on July 21, 2010.

Rowan-Kannapolis ABC Board. – The act provides for the appointment of three members to the Rowan Kannapolis ABC Board. The Rowan County Board of Commissioners, the Kannapolis City Council, and the Salisbury City Council each will appoint one member of the ABC

board. This provision was effective when the act became law on July 21, 2010, and applies to appointments and vacancies occurring on or after that date.

This act becomes effective October 1, 2010, except as otherwise noted. (BC)

Promote North Carolina Distilled Spirits

S.L. 2010-152, Sec. 14.12 (SB 897, Sec. 14.12) requires ABC stores to display spirits distilled in North Carolina in an area dedicated solely to North Carolina products. This section also provides for the issuance of a spirituous liquor tasting permit to the holder of an authorized distillery permit. The distillery may conduct a consumer tasting event on the premises of the distillery subject to the following conditions:

- Any person pouring spirituous liquor at a tasting must be an employee of the distillery and at least 21 years of age.
- The person pouring the spirituous liquor is responsible for checking the identification of patrons being served at the tasting, and samples shall not be offered to, or allowed to be consumed by, any person under the legal age for consuming spirituous liquor.
- Each consumer is limited to tasting samples of 0.25 ounce of each spirituous liquor which total no more than 1.5 ounces of spirituous liquor in any calendar day.
- The consumer is not charged for any spirituous liquor tasting sample.
- The spirituous liquor used in the consumer tasting event is distilled at the distillery where the event is being held.
- A consumer tasting event is not allowed when the sale of spirituous liquor is otherwise prohibited.

This section becomes effective October 1, 2010. (BC)

Chapter 3
Children and Families

Drupti Chauhan (DC), Wendy Graf Ray (WGR), Susan Sitze (SS)

Enacted Legislation

Protect Victims/Domestic Violence Shelters

S.L. 2010-5 (SB 140) amends the laws pertaining to domestic violence protective orders to make it a Class H felony for a person subject to an order to enter or remain on the premises of a shelter where the protected party is residing. The act also extends limited immunity from civil liability to persons associated with domestic violence protective shelters when there are tortious acts committed on shelter grounds.

Violation of a valid domestic violence protective order is generally a Class A1 misdemeanor. The law provides for higher penalties under certain circumstances. This act provides for aggravated penalties under certain circumstances when a person violates a valid protective order. If a person subject to a valid protective order enters a property used as a safe haven or domestic violence shelter, and is in violation of the order, then the violation is a Class H felony. The offense does not require that any parties protected by the protective order be present on the property.

The act also amends the law to provide that no shelter or person associated with the shelter is liable in tort to a shelter client or any other person on the premises, for any harm that results from the tortious conduct of a perpetrator. This applies where the tortious conduct is committed on the premises of the shelter, and the perpetrator is not a person associated with the shelter. The protection provided by this immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing on the part of the shelter or person associated with the shelter.

The provision of this act that makes it a Class H felony for a person who is the subject of a protective order to trespass on shelter premises where the protected party resides becomes effective December 1, 2010, and applies to offenses committed on or after that date. The remainder of the act became effective June 7, 2010. (WGR)

Attorney Fees/Alimony

S.L. 2010-14 (SB 59) amends the statute allowing a court to award reasonable attorney fees in actions for alimony or postseparation support. The act deletes language requiring the fees to be "for the benefit of" the applying spouse. The act addresses an issue raised in a North Carolina Supreme Court case where the Court held that attorney fees could not be awarded to a defendant spouse who was represented by pro bono counsel, because the fees were for the benefit of counsel and not the spouse. A two-justice dissenting opinion argued that this was not the intent of the General Assembly and maintained a broader, less restrictive interpretation of the phrase "for the benefit of" was required. This act deletes the language in question from the statute, eliminating any confusion over the interpretation of the phrase.

This act becomes effective October 1, 2010, and applies to fees for services rendered on or after that date. (WGR)

Responsible Individuals List/Abuse and Neglect

S.L. 2010-90 (SB 567) requires that an individual be given an opportunity for notice and judicial review prior to being placed on a list of individuals determined to be responsible for the abuse or serious neglect of children. The act is in response to a recent North Carolina Court of Appeals decision that declared the prior process for placement on and expunction from the list to be unconstitutional.

In 2005, the Department of Health and Human Services (DHHS) was required to maintain a list of individuals determined to be responsible for the abuse or serious neglect of children, the responsible individuals list (RIL). DHHS is permitted to provide information from the RIL to child care institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children. Prior to this act, an individual was placed on the RIL after an investigative assessment resulted in a determination of abuse or serious neglect. The investigative assessment did not provide for notice to, or an opportunity to be heard by, the individual. After placement on the list, the individual was permitted to request that the individual's name be expunged from the RIL. In the case of In re W.B.M., 690 S.E.2d 41 (N.C. App. 2010), the North Carolina Court of Appeals considered a challenge to the procedure for placing an individual on the RIL. The Court held that the statutory RIL procedures were unconstitutional and violated the individual's due process rights.

This act eliminates the prior expunction process for individuals placed on the RIL, and instead creates a process for judicial review prior to the individual being placed on the RIL, which includes the following provisions:

- An individual identified as a responsible individual may be placed on the RIL only after one of the following:
  - The individual was properly notified of the determination and failed to file a petition for judicial review in a timely manner.
  - The court determines that the individual is a responsible individual as a result of a hearing either on the individual's petition for judicial review, or on a juvenile petition that alleges and seeks a determination that the individual is a responsible person.
  - The individual is criminally convicted as a result of the same incident.
- The identified individual must be given notice that, unless the individual petitions for judicial review, the individual's name will be placed on the RIL.
- The individual is required to file for judicial review within 15 days of receipt of the director's determination. The standard of review for the hearing is a preponderance of the evidence of abuse or serious neglect and of the identification of the individual. The director, upon receipt of a notice of hearing for judicial review, is required to review the information and, if after the review determines there is not sufficient evidence, must prepare a written statement and give notice to the individual and the court, cancelling the hearing.
- The act defines serious neglect as conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

This act became effective July 11, 2010. (WGR)

Expand Access/Confidential Intermediaries

S.L. 2010-116 (HB 1463) expands access to confidential intermediary services from an adoption agency for facilitation of contact or to obtain identifying adoption information. It also

allows an agency acting as a confidential intermediary to obtain a copy of a death certificate of the person who is the subject of the search and deliver it to the person requesting services.

In North Carolina, adoption records are closed. The law provides that, with certain exceptions, no one may release a record that would lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an adoptee's birth sibling or grandparent. Exceptions are available through a court order, through voluntary consent, or through the services of a confidential intermediary. To facilitate contact or share the information, the confidential intermediary must have the written consent of all parties.

This act amends and expands the law pertaining to confidential intermediaries as follows:

Definition of "confidential intermediary". – The act amends the definition of "confidential intermediary" to define the term as an agency (licensed child placing agency or a county department of social services) that may act as a third party to facilitate the sharing of information authorized by statute.

Definition of "adult". – The act deletes the provision that defined "adult" as someone 21 or older for purposes of the provisions relating to the use of confidential intermediaries. This means that the general definition of "adult" applies; an adult is 18 or older, or a person under 18 who either is married or legally emancipated.

New Categories of People Added. – Prior to this act, confidential intermediary services were available to a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee. This act amends the list of people authorized to use confidential intermediary services to include the following:

- An adult biological sibling of an adult adoptee.
- An adult biological half sibling of an adult adoptee.
- An adult family member of a deceased biological parent.
- An adult family member of a deceased adoptee.

"Family member" is defined in the act as a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild. If the biological parent is living, written consent of the biological parent is required before contact with or sharing of identifying information between any of the other specified parties. The act also allows an agency to act as a confidential intermediary for the guardian of a minor adoptee.

Access to Death Certificate. – The act provides that, if a confidential intermediary determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate and deliver it to the person who requested the services.

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

Improve Child Care Nutrition/Activity Standards

S.L. 2010-117 (HB 1726). See **Health and Human Services**.

Studies

Regulation of Beauty Pageants for Youth

S.L. 2010-152, Sec. 2.17 (SB 900, Sec. 2.17) authorizes the Legislative Research Commission to study the regulation of beauty pageants for youth under 13 years of age in North Carolina.

This section became effective July 22, 2010. (WGR)

Chapter 4
Civil Law and Procedure

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

Enacted Legislation

Homeowner and Homebuyer Protection Act

S.L. 2010-164 (SB 1015). See **Commercial Law and Consumer Protection**.

Studies

Study Comparative Negligence and Joint and Several Liability

S.L. 2010-152, Part XXXV (SB 900, Part XXXV) established the Joint Select Committee to Study the Adoption of Comparative Negligence and Abrogation of Joint and Several Liability. The Committee consists of ten members, including five Senators appointed by the President Pro Tempore of the Senate, and five members of the House of Representatives appointed by the Speaker of the House of Representatives. The Committee must study issues involving the adoption of comparative negligence, the abrogation of joint and several liability, and other issues related to tort liability. The Committee may make a final report, including any proposed legislation, to the 2011 General Assembly upon its convening. The Committee terminates upon the filing of its final report or upon the convening of the 2011 General Assembly, whichever occurs first.

This part became effective July 22, 2010. (BK)

Chapter 5
Commercial Law and Consumer Protection

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

Enacted Legislation

Amend Cemetery Act

S.L. 2010-102 (SB 18) makes several changes to the North Carolina Cemetery Act. The act prohibits the North Carolina Cemetery Commission from approving a change of control of a cemetery company until the applicant provides sufficient evidence that appropriate merchandise and preconstruction trust accounts are maintained, or performance bonds have been obtained in lieu of those accounts in an amount sufficient to cover all payments made by purchasers who have not received the purchased property and services. It provides that funds in a perpetual care trust account must be invested by the trustee in the same manner as other fiduciaries according to the prudent person rule in G.S. 32-71. The act requires a cemetery company to list the cost of opening and closing each grave space in its contracts, and prohibits a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault from a particular seller. The act increases from one to three years the extension that may be given to a cemetery company for completion of construction of mausoleums and belowground crypts. Finally, the act authorizes the creation of a study commission to study various issues related to the regulation of cemeteries under the North Carolina Cemetery Act.

The section of the act which authorizes the study commission became effective July 20, 2010. The remainder of the act becomes effective October 1, 2010. (KCB)

Homeowner and Homebuyer Protection Act

S.L. 2010-164 (SB 1015) provides greater protection to homeowners and homebuyers by restricting and/or regulating certain real estate practices.

Home Foreclosure Rescue Scams

The act prohibits foreclosure rescue transactions by anyone, for financial gain or with the expectation of financial gain, other than the transferor unless the transferee pays at least 50% of fair market value of the property when the property is transferred. A foreclosure rescue transaction is a transfer of residential real property, including a manufactured home, which includes all of the following:

- The real property is the principal residence of the transferor.
- The transferor is in default or foreclosure proceedings have been initiated against the property.
- The transferee makes representations that the transfer of the property will prevent foreclosure and enable the transferor to remain in the home.
- The transferor retains an interest in the property conveyed.

A foreclosure rescue transaction contract must be in writing and contain all of the terms to which the parties have agreed. A violation of the act is an unfair and deceptive practice under G.S. 75-1.1, however, an individual homeowner selling his or her primary residence is not subject to liability under G.S. 75-1.1.

Option to Purchase Contracts with Lease Agreements

The act enacts a new chapter to regulate option contracts containing an option to purchase real property which includes, is combined with, or is executed in conjunction with a

residential lease agreement. Every option contract must be in writing and contain all the terms agreed to by the parties, as well as certain terms specified in the statute. The seller must record a copy of the contract or a memorandum of the contract with the register of deeds of the county in which the property is located within five business days after the contract has been signed. If the contract is forfeited, the purchaser's equitable right of redemption can be extinguished by a mutual termination agreement or a court order. The purchaser's right to exercise the option cannot be forfeited unless a breach has occurred, and the purchaser must be given at least 30 days' notice of the default and intent to forfeit before action is taken. Also, the purchaser has the right to cure the default at least once in every 12-month period during the term of the lease. If the property is encumbered and the option seller defaults on the loan secured by the property, the purchaser may elect to exercise the option or cancel the contract and receive a refund of the money paid, minus an offset for the rental value and for any damages beyond normal wear and tear. A violation is an unfair trade practice under G.S. 75-1.1.

Contract for Deed

The act enacts a new chapter to regulate contracts for deed, in which a seller agrees to sell an interest in property to a purchaser, and the purchaser agrees to pay the purchase price in five or more payments, exclusive of the down payment; the seller retains the title to the property as security for the purchaser's obligation under the agreement. Every contract for deed must be in writing, signed by all parties, and contain all of the terms agreed to, as well as certain terms specified in the agreement. The seller must record a copy of the contract or a memorandum of the contract with the register of deeds of the county in which the property is located within five business days after the contract has been signed. If the contract is forfeited, the purchaser's equitable right of redemption can be extinguished by a mutual termination agreement or a court order. The purchaser's rights under the contract for deed cannot be forfeited unless a breach has occurred, and the purchaser must be given notice of the default and intent to forfeit before action is taken. The purchaser also must be given at least 30 days to cure the default. The notice of default and intent to forfeit must contain specific information, including a description of each default and an itemized statement of all payments in default, or for defaults not involving failure to pay money, the action required to cure the default. The notice must be delivered to the purchaser in a manner authorized for service of process in a civil action. At least once in every 12-month period, the seller must provide the purchaser with a statement of account.

A seller may not enter a contract for deed if the seller does not hold title to the property. If the seller's title is encumbered, the seller may enter a contract for deed only if one of the following conditions is met:

- The encumbrance was agreed to by the purchaser, in writing, to make improvements on the property.
- The encumbrance was placed on the property prior to the contract of deed, if the seller is a licensed general contractor, licensed manufactured home dealer, or licensed real estate broker who continues to make timely payments.
- The encumbrance was placed on the property prior to the contract of deed, if the seller is not a licensed general contractor, licensed manufactured home dealer, or licensed real estate broker, if the lien is attached only to the property sold to the purchaser, and the seller continues to make timely payments.

A seller may not charge a late fee in excess of 4% of the past due amount under a contract for deed. The late fee may not be charged until the payment is more than 15 days past due. A violation is an unfair trade practice under G.S. 75-1.1

This act becomes effective October 1, 2010, and applies to transactions entered on or after that date. (KCB)

Extend Emergency Foreclosure Program

S.L. 2010-168 (SB 1216) amends the Emergency Program to Reduce Home Foreclosures Act, and creates the State Home Foreclosure Prevention Trust Fund.

S.L. 2008-226 created an "Emergency Program to Reduce Home Foreclosures." The program established a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure and submit information on those loans to a database housed within the Administrative Office of the Courts (AOC). The Commissioner of Banks uses the information from the database to attempt to find solutions for homeowners to avoid foreclosure, and is authorized to extend the foreclosure process for up to 30 days in appropriate cases. The program became effective November 1, 2008, and was set to expire on October 31, 2010. Initially, the program applied only to subprime home loans that were originated between January 1, 2005, and December 31, 2007. This act makes the program applicable to all home loans in the State in which the borrower is facing foreclosure and extends the expiration date until May 31, 2013.

The act creates the State Home Foreclosure Prevention Trust Fund, to be managed and maintained by the Commissioner of Banks. It provides that upon filing the information required for the database, mortgage servicers are required to pay a fee of $75 to the Fund. The Fund can be used only for specified purposes related to implementing the Program. The Commissioner is given discretion to enter agreements with other State and federal programs aimed at foreclosure prevention.

The act amends the S.A.F.E. Mortgage Licensing Act to increase the fee for licensing a principal or branch office of a mortgage broker or mortgage lender from $125 to $300, to increase the branch office renewal fee from $125 to $300, and to increase the renewal fee for licensed mortgage loan originators from $67.50 to $125. The Commissioner of Banks is authorized, under the S.A.F.E. Mortgage Licensing Act, to charge a new administrative processing fee not to exceed $75.

In addition, the act amends the Predatory Lending law to exclude a portion of the upfront fees paid to the Federal Housing Administration, the Veterans Administration, or the United States Department of Agriculture from the calculation of the total amount of points and fees that can be charged on a home loan before it becomes a high cost loan. A loan becomes a high cost loan if the total amount charged as points and fees exceeds 5% of the total loan amount. Fees paid to a federal agency that guarantees or insures a loan are included in this calculation. The act excludes the portion of the fees paid to federal agencies, or for private mortgage insurance premiums that exceeds 1.25% of the total loan amount from the calculation of points and fees paid by the borrower. It also reduces the threshold for points and fees from 5% to 4%.

Provisions relating to the Emergency Program to Reduce Home Foreclosures become effective November 1, 2010, and expire May 31, 2013. Provisions relating to the S.A.F.E. Mortgage Licensing Act and the Predatory Lending Act, become effective September 1, 2010. The remainder of this act became effective August 2, 2010. (KCB)

Low-Profit Limited Liability Company

S.L. 2010-187 (SB 308) recognizes a new type of corporate designation for a limited liability company (LLC) that requires operation of the company in accordance with these three requirements:

- To accomplish one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code.
- To operate so that no significant purpose of the company is the production of income or the appreciation of property.
- To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code.

A LLC that chooses to put these conditions on its operations by including them in its articles of organization and by operating in accordance with them may, under this act, call itself a

"low-profit limited liability company" and use the designation "L3C". Like a LLC, a L3C is subject to federal and State tax, and investments in a L3C are not tax deductible.

The formation of a L3C is designed to facilitate program-related investments (PRI) by private foundations. Private foundations must distribute at least 5% of their capital for charitable purposes to maintain their nonprofit status. Although foundations often expend these funds through grants, they also may meet the expenditure requirement with Internal Revenue Service-sanctioned PRIs. A PRI is an investment that supports charitable activities but may involve the potential return of capital. An example of a PRI is a loan, a loan guarantee, and an equity investment in a charitable organization. Foundations do not usually make PRIs without an IRS private letter ruling that the investment meets the IRS requirements as an acceptable PRI. The expense of obtaining a private letter ruling deters foundations from this form of investment. The founders of the L3C designation hope that the IRS or Congress will choose to treat an investment in a L3C as a PRI without the need for a private letter ruling, because the three requirements to form as a L3C mirror the IRS requirements for a PRI. Neither the IRS nor Congress has evidenced any movement on this issue.

This act became effective August 3, 2010. (CA)

No Foreclosure/Soldiers on Active Duty/Funds

S.L. 2010-190 (SB 1400) prohibits foreclosures under a power of sale during, or within 90 days after, a debtor's period of military service, and requires a foreclosing party to certify to the clerk that that the debtor is not on active military duty before a foreclosure hearing can be scheduled.

The prohibition applies to mortgagees, trustees, or other creditors attempting to exercise powers of sale contained in a mortgage or deed of trust, or provided by statute. For powers of sale pursuant to a mortgage or deed of trust, the prohibition applies only to mortgages or deeds of trust that originated prior to the debtor's period of military service. The debtor's rights under this section can be waived in writing by separate instrument executed during or after the debtor's period of military service.

The act also amends requires foreclosing parties to notify debtors that foreclosure may be prohibited if the debtor is on military duty, and requires the clerk to find that a power of sale foreclosure is not barred by this act before authorizing the foreclosure proceeding.

This act becomes effective January 1, 2011, and applies to foreclosures initiated on or after that date. (WP)

Studies

Legislative Research Commission (LRC)

Use of "Most Favored Nation" Clauses

S.L. 2010-152, Sec. 2.16 (SB 900, Sec. 2.16) authorizes the LRC to study the use of "Most Favored Nation" (MFN) clauses in contracts, including:

- The extent to which MFN clauses are included in contracts in the State and in the nation as a whole.
- The most common forms and elements of MFN clauses.
- The effect of inclusion of MFN clauses in contracts.
- The effect that prohibiting the use of MFN clauses in contracts has had in those states that have prohibited their use.

- Any other issue relating to the use or prohibition of MFN clauses that the LRC deems appropriate.

This section became effective July 22, 2010. (KCB)

New/Independent Studies/Commissions

Study Commission on Expansion of the Life Sciences Industry and Related Job Creation

S.L. 2010-152, Part XXXVII, Secs. 37.1 – 37.4 (SB 900, Part XXXVII, Secs. 37.1 – 37.4) establishes the Study Commission on the Expansion of the Life Sciences Industry and Related Job Creation. The Commission is authorized to examine issues related to:

- The need for additional sources of financing for life science companies to finance facilities and equipment for the manufacture, production, or warehousing of life science products and services in the State and other facilities for the production and delivery of life science products and services in the State.
- The legislative proposals contained in SB 580 (North Carolina Life Science Development Corporation Act) and HB 530 (Life Sciences Development Act) of the 2009-2010 legislative sessions.

The Commission is directed to make its final report together with any proposals to the General Assembly by February 1, 2011. The Commission terminates upon filing its final report or February 1, 2011, whichever is earlier.

This section became effective July 22, 2010. (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

No Felon as Sheriff*

S.L. 2010-49 (HB 1307) proposes to amend Section 2 of Article VII of the North Carolina Constitution to provide that no person convicted of a felony against this State, the United States, or another state is eligible to serve as Sheriff, whether or not that person has had citizenship rights restored under the law. "Convicted of a felony" includes the entry of a guilty plea; a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or a plea of no contest, nolo contendere, or the equivalent.

Currently, Section 8 of Article VI of the Constitution disqualifies a person from elective office generally if that person has been convicted of a felony and has not had citizenship rights restored according to law. Chapter 13 of the General Statutes provides that a felon's citizenship rights are automatically restored upon completion of their sentences.

Like all proposed amendments to the State Constitution, the one proposed in this act is subject to a statewide referendum. The act sets the referendum on November 2, 2010, the date of the general election.

If the voters approve the proposal, the amendment becomes effective upon the certification of the referendum results. (BG)

Designation of Uses of Campaign Funds

S.L. 2010-100 (HB 1136) authorizes the personal representative of a candidate who did not file a written designation for the permitted uses of remaining campaign funds to do so within 90 days of the date of death. The personal representative is limited to directing those funds to 501(c)(3) charitable organizations.

The bill amends the 2006 act that placed limits on the uses candidates and candidate campaign committees can make of the funds in their campaign accounts. The 2006 act provided that the funds in a campaign account at the time of a candidate's death would escheat to the State unless the candidate, before death, had filed a statement providing a different designation.

This act became law effective July 20, 2010. For any candidate campaign committee that was active status with the State Board of Elections on that date, the personal representative of the estate may file the written designation within 90 days of the day this act receives preclearance under Section 5 of the Voting Rights Act. (BG)

Limitation on the Use of Public Funds

S.L. 2010-114, Sec. 1.5 (HB 593, Sec. 1.5) prohibits counties, municipalities, and local boards of education from using public funds to endorse or oppose a referendum, election, or a particular candidate for elective office.

This section became effective July 20, 2010, and applies beginning with the 2010-2011 school year. (KM)

Government Ethics and Campaign Reform Act of 2010

S.L. 2010-169 (HB 961) made various changes to the campaign finance laws, public records laws, ethics laws, and lobbying laws as follows:

- Makes it unlawful for a member of the Council of State to coerce political contributions or support by threatening discipline or promising preferential treatment to the following groups of people: Persons doing or seeking to do business with the Council of State member's department; persons engaged in activities that are regulated or controlled by the Council of State member's department; or persons who have financial interests that may be affected substantially by the performance or nonperformance of the Council of State member's official duties. A violation is a Class 2 misdemeanor.
- Prohibits public officers or employees involved in making or administering a contract on behalf of a public agency from soliciting or receiving favors, services, and promises of future employment in exchange for recommending, influencing, or attempting to influence the award of the contract.
- Expands the prohibition on bribery of officials to include a prohibition on those who have filed a notice of candidacy for or have been nominated for such office.
- Provides that certain unlawful campaign contributions, including giving in the name of another, anonymous contributions, and contributions by corporations, business entities, labor unions, professional associations, or insurance companies to candidates or political committees or to compensate, reimburse, or indemnify an individual for money or property for making contributions or expenditures which total more than $10,000 per election are a Class I felony. This prohibition shall not apply to contributions by individuals with the lawful authority to act on behalf of another individual.
- Adds the State Board of Elections to the administrative hearing process for the purposes of investigations and audits required of the Board under Chapter 163 of the General Statutes.
- Mandates that the State Board of Elections create an easily searchable database to provide the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.
- Codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable website and database on State spending for grants and contracts awarded in amounts in excess of $10,000. Information provided for each contract or grant shall include: The name of the entity receiving the award; the amount of the award; the location of the entity receiving the award; expected outcomes of the contract or grant, and specific deliverables required; and contact information for the responsible state government officer or administrator of the contract or grant.
- Adds the following as public servants: The Executive Director and Assistant Executive Director of the State Ethics Commission; the Director of the Office of State

Personnel; the State Controller; the Chief Information Officer and Deputy Chief Information Officers, Chief Financial Officers, and General Counsel of the Office of Information Technology; the Director of the State Museum of Art; the Executive Director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks and Chief Deputy Commissioners of the Banking Commission; the Executive Director of the North Carolina Housing Finance Agency; and the Executive Director, Chief Financial Officer, and Chief Operating Officer of the North Carolina Turnpike Authority.

- Adds the Governor's Crime Commission as a covered board, which means its members are public servants under the State Government Ethics Act.
- Requires a covered person to file a statement of economic interest in the year following the year that a covered person resigns or does not file a notice of candidacy or petition for election.
- Makes various changes to the annual statement of economic interest required to be filed by covered persons, as follows:
  - Removes the requirement that statements of economic interest be sworn.
  - Permits any filing person to list just the initials of an unemancipated child in the statement of economic interest, and provide the full name of the child in a confidential document to the State Ethics Commission.
  - Adds sole proprietorships to the list of business entities that must be listed on the statement of economic interest.
  - Clarifies that the statement of economic interest should include the name of each business with which the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, member or manager, and identifies which of these businesses do business with the State.
  - Adds a requirement that the statement of economic interest form include a question to list contributions to the appointing Council of State member totaling more than $1,000 in the preceding year.
  - Adds a requirement that the statement of economic interest form include a yes/no question as to whether the filing person engaged in certain campaign related activities in the preceding calendar with the respect to or on behalf of the candidate or candidate campaign committee of the covered person who appointed the filing person. This requirement would apply only to specific filing persons.

These provisions become effective January 1, 2011, and apply to statements of economic interest filed on or after that date.

- Authorizes the Governor to adopt additional and supplemental ethics standards applicable to any gubernatorial appointee to any State board, commission, or similar public body, and to adopt minimum ethics standards applicable to any employee of a State agency. The Governor is required to publish those standards in the North Carolina Register and make them available to each subject appointee or employee.
- Clarifies that an indirect gift prohibited under the gift ban includes gifts where a designated individual is not the sole recipient.
- Mandates that rules adopted by the State Ethics Commission which do not follow the truncated rule-making procedure set out in statute are null, void, and without effect. Also defines rules as any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission.
- Clarifies the definition of lobbyist so that the relationship between a lobbyist and a lobbyist principal is triggered only when the relationship includes payment, and changes the definition of a lobbyist to an individual who engages in lobbying for payment and meets certain criteria. Corresponding changes also are made to the

definition of lobbyist principal to clarify that a lobbyist principal is a person or governmental unit on whose behalf a lobbyist lobbies and who makes payment for that lobbying. Also requires lobbyist principals to annually report the cumulative combined totals of all payments for lobbying during the registration period, and for certain specific communications and activities used to lobby. These provisions become effective January 1, 2011, and apply to offenses committed on or after that date, and reports filed on or after that date.

- Requires the release of the following information previously held confidential in personnel records of employees of State government, local boards of education, community colleges, area mental health authorities, public health authorities, counties, cities, and water and sewer authorities:
  - The date and amount of each salary change.
  - The date and type of each promotion, demotion, transfer, or suspension, separation, or other change in position classification.
  - The date and general description of the reasons for each promotion.
  - The date and type of each dismissal, suspension, or demotion for disciplinary reasons.
  - A copy of the written notice of final decision setting forth the specific acts or omissions for a dismissal.

  These provisions become effective October 1, 2010.
  - Requires the Secretary of State and the State Ethics Commission to publish annual statistics for complaints of violations of the lobbying law, including number of systematic reviews, number of complaints filed, number of apparent violations referred to a district attorney, number of complaints dismissed, and number and age of complaints pending. All civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, must be public record.
  - Exempts anything of value given or received in connection with seeking or hosting a national political party convention from all of the lobbying laws, including the gift ban and reporting provisions.
  - Amends the access to public records law by requiring mediation of public records disputes. Voluntary mediation may be initiated prior to suit being filed, and mandatory mediation is required within 30 days from the filing of responsive pleadings with the clerk. The mediation:
    - Is initiated by filing a request for mediation with the clerk of court in a county in which the action may be brought on a form prescribed by the Administrative Office of the Courts. Parties must be provided by the clerk with a list of certified mediators from which to select, and if a mediator cannot be agreed upon by the parties, the senior resident superior court judge must appoint a mediator.
    - Must be conducted in accordance with the standards for mediated settlements of civil cases. Mediation may be waived if all parties agree and the mediator is so informed in writing. At the conclusion of mediation, the mediator must prepare and file a certification stating the date on which the mediation was concluded and the general results of the mediation.
    - Does not preclude parties from seeking injunctive or other relief, including production of public records, prior to the scheduled mediation.

    If a party successfully compels the disclosure of public records, the court must allow that party to recover its reasonable attorneys' fees. The court may not assess attorneys' fees against a governmental body or unit if the court finds the governmental body or unit acted in reasonable reliance on a court order, appellate decision, or opinion of the Attorney General. The

court may not assess fees against a public hospital if the court finds the action was brought by, or on behalf of, a competing health care provider to gain competitive advantage. These provisions become effective October 1, 2010, and apply to actions filed on or after that date.

- Clarifies that sworn complaints filed with the State Ethics Commission can allege violations of the Legislative Ethics Act or certain criminal provisions, and changes the timeframe within which the State Ethics Commission must send a copy of a complaint to the complainant from 30 days to 10 business days. Also changes the timeframe in which the State Ethics Commission must initiate a complaint from 60 days to 10 business days. Requires the State Ethics Commission to conclude a preliminary inquiry of an investigation within 20 business days and allows the Commission to dismiss a complaint that is determined to be frivolous or brought in bad faith.
- Prohibits a legislative employee from disclosing confidential information, and clarifies 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. This provision becomes effective October 1, 2010.
- Mandates the Legislative Ethics Committee to study the need for additional regulations of campaign contributions to State officials and candidates for State office by persons doing business with, or regulated by, the office held by the State official. The Committee also must study the statement of economic interest form required to be filed by covered persons to ensure the form accurately and informatively discloses the required information. The Committee must report its findings and recommendations to the 2011 General Assembly on or before April 1, 2011.
- Establishes the Public Funding of Council of State Elections Commission, with a total of ten members. Five of the members must be appointed by the Speaker of the House of Representatives, including a majority party member, a minority party member, a representative from the North Carolina Chamber, a representative of groups opposing public financing of elections, and an individual who has received public financing for a campaign. Five of the members must be appointed by the President Pro Tempore of the Senate, including a majority party member, a minority party member, an individual in business recommended by a business association other than the North Carolina Chamber, a representative of groups advocating for public financing of elections, and a representative of the North Carolina State Bar. The Commission must study issues related to continuation of public financing for Council of State elections, including examining the existing program, funding and financial needs, whether to expand the program to other Council of State offices, and related legal precedents and constitutional issues. The Commission must report no later than March 1, 2011, to the 2011 General Assembly.
- Makes technical and clarifying changes to the State Government Ethics Act and Lobbying laws.

This act became effective August 2, 2010, except as otherwise noted. Criminal penalties become effective December 1, 2010, and apply to offenses committed on or after that date. (DHA and KM)

Citizens United Response

S.L. 2010-170 (HB 748) makes various changes to the campaign finance statutes in response to the U.S. Supreme Court case, Citizens United v. Federal Election Commission.

In Citizens United v. Federal Election Commission, 558 U.S. 50 (2010), the U.S. Supreme Court held that the government may not suppress political speech based on the speaker's corporate identity. The Court struck down federal law which prohibited a corporation from making independent expenditures for express advocacy or electioneering communications. The Court did not address the question of whether corporations can be prohibited from making contributions. The Court upheld disclaimer and disclosure requirements for independent expenditures.

The act makes the following changes in response to the Supreme Court decision:

- **Definitions.** Adds several new definitions to Article 22A of Chapter 163, which covers the regulation of contributions and expenditures in political campaigns, including:
  - Coordination and Coordinated expenditure: An expenditure made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee, or the agent of the candidate or candidate campaign committee. An expenditure for the distribution of information relating to a candidate's campaign, positions, or policies that is obtained through publicly available resources is not considered a coordinated expenditure if it is not made at the request of a candidate, a candidate campaign committee, or the agent of the candidate or candidate campaign committee.
  - Electioneering communication: Transfers definitions in Articles 22E and 22F of Chapter 163 into Article 22A of Chapter 163, with the following changes:
    - Expands the application from statewide and General Assembly candidates to candidates for all offices.
    - Covers communication aired or transmitted within 60 days before one-stop (early) voting begins in an election for that office, rather than 60 days before general election day, or 30 days before primary day. Early voting begins on the third Thursday before the election.
    - Lowers the coverage threshold from 50,000 to 20,000 households for mass mailings and phone banks in a statewide election.
    - Adds to the current exclusions from the definition of "electioneering communication" (1) public opinion polls conducted by a news medium or polling organization (excluding "push polls"), and (2) print communications by news media. "News medium" is as defined in GS 8-53.11, which gives testimonial privileges to journalists for news media.
- **Disclosure of Independent Expenditures.** Requires independent expenditures to be reported according to the same schedule required of political committees. For large last-minute activity – expenses of $5,000 or more incurred, or donations of $1,000 or more received, to further independent expenditures before an election but after the period covered by the last report due before that election – the act requires 48-hour reporting.

  Current law requires the entity making the disclosure also to disclose donations to it of more than $100 for the purpose of furthering an independent expenditure or contribution. The act provides that a donation to the filer of the report is deemed to have been made to further the independent expenditure if it meets any of the following:
  - The donor designates, requests, or suggests the donation be used for independent expenditures, and the filer agrees.
  - The filer expressly solicits the donation from the donor for an independent expenditure.
  - The filer and donor engage in substantial written or oral discussion regarding the donor making an independent expenditure.
  - The donor or filer knew or had reason to know of the filer's intent to make independent expenditures or contributions with the transfer.

Donations are not deemed to be made to further an independent expenditure if the donation was a commercial transaction in the ordinary course of business, absent affirmative evidence that the amount was donated to further an independent expenditure. In determining the amount of a donation that was made to further any particular independent expenditure, any amount that was designated by the donor with respect to a different election than the election that is the subject of the independent expenditure covered by the report is excluded.

The act requires that reports of more than $5,000 in independent expenditures be filed electronically.

- **Disclosure of Electioneering Communications.** Every individual or person who incurs an expense for the direct costs of producing or airing electioneering communications aggregating in excess of $5,000 (down from $10,000) is required to file with the State Board of Elections a report which includes: The identification of any person(s) incurring the expense; the custodian of the books and accounts and the principal place of business of the person incurring the expense; the amount of each expense incurred; the elections to which each communication pertain; and the names and addresses of all entities that provided anything of value in an aggregate amount of $1,000 to further the electioneering communication.

  The initial report must be filed with the Board no later than the 10th day following the day the individual or person incurs an expense for the direct costs of producing or airing an electioneering communication. The Board must require subsequent reporting on the same schedule as reporting required by political committees, including 48-hour reporting of large last-minute activity like that for independent expenditures. The act also requires disclosure of donors like that of independent expenditures, and requires electronic filing with the State Board if the expense incurred is greater than $5,000.
- **Requirements for Media Outlets.** Provides that every media outlet shall require written authorization for each independent expenditure or electioneering communication, similar to the current requirement for campaign expenditures. All written authorizations are considered public records and must be made available for inspection during the media outlet's normal business hours.
- **Repeal of Prohibition on Independent Expenditures by Corporations, Etc.** Repeals the prohibition on independent expenditures by corporations, business entities, labor unions, professional associations, and insurance companies to support or oppose the nomination or election of clearly identified candidates.
- **Determination by State Board of Elections.** Authorizes the Board to establish a process for determining whether a communication is an expenditure, independent expenditure, or electioneering communication prior to the airing or distribution of that communication when requested by an individual or person producing a communication. The responsibility for the determination may be delegated to the Executive Director of the Board. If the responsibility is delegated to the Executive Director, the process established by the Board shall require a written determination by the Executive Director to include stated findings and an opportunity for immediate appeal to the State Board of the determination by the Executive Director.
- **Basic Disclosure on Ads.** Amends the disclosure requirements for political advertisements to require that a print media, radio, or television advertisement supporting or opposing the nomination or election of one or more clearly identified candidates that constitutes an electioneering communication or independent expenditure must meet existing disclosure requirements for expenditures and contributions. Print media that is an independent expenditure opposing or supporting a clearly identified candidate must disclose the five largest donations to the sponsor within the six months prior to purchase of the ad, and the same

disclosure must be made for electioneering communications. Size requirements for TV disclosure is changed from 32 scan lines to 4% of vertical picture height.

- **TV and Radio Ads.** Requires television or radio advertisements which support or oppose the nomination or election of a clearly identified candidate sponsored by corporations with the purpose of promoting social, educational, or political ideas to include the following information:
  - Television Ads: A legible on-screen listing indicating with which board of elections donor information may be found.
  - Radio Ads: An aural disclosure indicating with which board of elections donor information may be found.

  The act also requires electioneering communications on television and radio purchased by an individual to include the same sponsorship disclosures as an independent expenditure.
- **No Write-ins in Nonpartisan Runoff.** For cities using the nonpartisan election and runoff system, no space for write-in candidates shall be included on the runoff ballot. Effective January 1, 2011.

Except as noted, this act becomes effective upon preclearance under Section 5 of the Voting Rights Act. (EC)

Absentee Voting Changes

S.L. 2010-192 (HB 614) changes North Carolina's law on automatic transmission of absentee ballots to uniformed military personnel, so that an application for an absentee ballot will trigger transmission of ballots to the uniformed voter for all the elections during that calendar year.

The bill reverses a North Carolina law enacted in 2003 to conform to a 2002 federal change. The 2003 law provided that one application by a military person for an absentee ballot would trigger transmission of ballots in all elections through the second general election for federal office after the application is made. In 2009, Congress repealed its 2002 change. Evidence had appeared that sending ballots to the same address of a military person for two elections often resulted in ballots being sent to outdated addresses, since uniformed personnel are so often reassigned. The change in this act re-adapts North Carolina law to the second federal change.

This act became effective on August 4, 2010, but it applies only to applications made after the 2010 general election. The bill must be pre-cleared under Section 5 of the Voting Rights Act before it can be implemented. (BG)

Chapter 7
Courts, Justice, and Corrections

Brenda Carter (BC), Erika Churchill (EC), Tim Hovis (TH), Jeff Hudson (JH)
Kara McCraw (KM), Howard Alan Pell (HAP), Kelly Quick (KQ),
Wendy Graf Ray (WGR), Susan Sitze (SS)

Enacted Legislation

Education for Prison Inmates

S.L. 2010-31, Sec. 8.3 (SB 897, Sec. 8.3). See **Education.**

Special Proceedings/Partition Filing Time Changes

S.L. 2010-97, Sec. 1 (SB 1242, Sec.1) amends the time requirements for filing pleadings in partition actions to allow for up to 30 additional days, and removes requirement for an affidavit when showing good cause why pleadings filing deadlines applicable to a special proceeding should be enlarged.

This act became effective July 20, 2010. (KQ)

Queries for Legal Status of Prisoners

S.L. 2010-97, Sec. 12 (SB 1242, Sec. 12) removes the requirement that queries regarding the legal status of prisoners be made through the Division of Criminal Information system, and instead requires that such queries be made directly to the federal Immigration and Customs Enforcement Division. The section also removes the requirement for annual reports to the Governor's Crime Commission by facilities on the number and results of the queries.

This section became effective July 20, 2010. (KM)

Modified Drug Treatment Court Probation Judgments

S.L. 2010-97, Sec. 13 (SB 1242, Sec. 13) clarifies that probation judgments modified after December 1, 2009, are subject to the exclusive jurisdiction of the superior court for hearings to revoke probation where the district court is supervising a drug treatment court probation judgment, and that the district court, with the consent of the chief district court judge and the senior resident superior court judge, may exercise supervision over those probation judgments entered in superior court.

This section became effective July 20, 2010. (KM)

Amend Concealed Handgun Permit Laws

S.L. 2010-104 (HB 859) exempts certain retired probation or parole certified officers from the firearm safety and training course requirement for purposes of the concealed handgun permit. To qualify for the exemption the person must apply for the permit within two years following the date of retirement, and must meet all of the following criteria:

- Immediately prior to retirement, the person met applicable firearms training standards and was authorized to carry a handgun in the course of duty.
- The person retired in good standing and was never the subject of a disciplinary action that would have prevented the person from carrying a handgun.

- The person has a vested right to benefits under the Teachers' and State Employees' Retirement System of North Carolina.
- The person is not prohibited by State or federal law from receiving a firearm.

This act becomes effective December 1, 2010, and applies to probation and parole certified officers who retired before, on or after that date. (BC)

Determining Senior Resident Superior Court Judge

S.L. 2010-105 (HB 1398) authorizes the Chief Justice of the Supreme Court to designate the senior resident superior court judge for a district or set of districts if there are two or more regular resident superior court judges in that district or set of districts. The Chief Justice is to consider the seniority, experience, and management competence of the judges when making the selection. Under existing law, if there are two or more regular resident superior court judges in a district or set of districts, the judge with the most continuous service as a regular resident superior court judge serves as the senior resident superior court judge, and if two judges are of equal seniority, the oldest of the judges serves as the senior regular resident superior court judge.

This act becomes effective October 1, 2010, and provides that senior resident superior court judges seated on that date in multi-judge districts continue to serve until the judge vacates the seat. (TH)

Domestic Violence Training for Judges

S.L. 2010-106 (HB 1762) requests that the North Carolina Supreme Court adopt rules establishing minimum standards of education and training for district court judges handling civil and criminal domestic violence cases. The act also encourages The University of North Carolina School of Government to provide education and training opportunities for district court judges and magistrates in the handling of civil and criminal domestic violence cases. The act was a recommendation of the Joint Legislative Committee on Domestic Violence.

This act became effective July 20, 2010. (WGR)

Allow Electronic Parole Notification

S.L. 2010-107 (HB 1115) allows for electronic notification, rather than notice by first class mail, to the media whenever the Post Release Supervision and Parole Commission is considering parole for a person serving a life sentence if such notification would be more timely and cost effective. The other entities that must be notified, including victims and law enforcement, will continue to receive notice by first class mail.

This act became effective July 20, 2010. (EC)

Domestic Violence Cases/Review Criminal Record

S.L. 2010-135 (HB 1812) requires that a law enforcement agency or the prosecutor provide a defendant's criminal history record to a judicial official considering pretrial release conditions where the defendant has been charged with an offense under the domestic violence crimes statute, G.S. 15A-534.1. The judicial official shall consider the record in determining conditions of pretrial release, and then return the record to the agency providing it.

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

Amend Innocence Inquiry Commission

S.L. 2010-171 (SB 144) amends the 2006 law establishing the North Carolina Innocence Inquiry Commission (Commission) as follows:

- Requires the Chief Justice of the Supreme Court to appoint the post-Commission judicial panel within 20 days of the filing of the opinion of the Commission finding sufficient evidence of factual innocence to merit judicial review.
- Provides if there is an allegation of, or evidence of, prosecutorial misconduct in the case, the Chair of the Commission or the district attorney of the district of conviction may request the Director of the Administrative Office of the Courts (Director) to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. Upon receipt of a request to appoint a special prosecutor, the Director may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, including one from the prosecutorial district where the convicted person was tried, to represent the State at the hearing before post-Commission judicial panel. The Director may not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted person.
- Provides the State will have 90 days from the date of the order of the senior resident superior court judge setting the case for hearing to file a response to the Commission's opinion. The response may include joining the defense in a motion to dismiss the charges with prejudice on the basis of innocence.
- Provides the defense and prosecution may compel the testimony of any witness and that all evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing.
- Provides that a person who is determined by the post-Commission judicial panel to be innocent of all charges and against whom all charges are dismissed is eligible for compensation without obtaining a pardon from the Governor. A claim against the State for compensation for loss sustained through erroneous conviction and imprisonment must be made within five years of the date of dismissal of the charges.
- Removes the limitation contained in the 2006 law establishing the Commission that provided that the law applied only to claims of factual innocence filed on or before December 31, 2010.

The provisions of this act related to the hearing process of the post-Commission judicial panel become effective October 1, 2010, and apply to claims of factual innocence filed on or after that date. The remainder of the act became effective August 2, 2010. (JH)

Clarify Expunctions

S.L. 2010-174, Secs. 1-15 (HB 726, Secs. 1-15) make a variety of changes, mostly technical and conforming, to the statutes related to expunction of criminal records. During the 2009 Session, the General Assembly adopted S.L. 2009-510 (SB262) and S.L. 2009-577 (HB1329), which dealt with expunction issues. Both of the two bills were ratified on August 11, 2009, but were not reconciled with each other, resulting in some inconsistencies in various expunction statutes. Additionally, there was an error in the version of S.L. 2009-510 that was adopted on the House floor, resulting in several corrections to the bill not being adopted.

- **Corrections due to incorrect version of S.L. 2009-510 adopted by House.** – These sections add additional language relating to expunction of records by private entities. This is language that was omitted by the adoption of the incorrect version of the bill in 2009.
- **Remove affidavit requirement/Add criminal background check.** – These sections delete the requirement to provide affidavits from the clerk of superior court,

chief of police, and sheriff attesting that the applicant for an expunction has no disqualifying convictions. These sections instead require a name-based State and national background check and a search of Administrative Office of the Courts confidential expunction files.

- **Other technical and clarifying changes**. – These sections amend a new expunction provision authorized by S.L. 2009-577, allowing the expunction of misdemeanor larceny convictions. These sections correct an inconsistency in the law by requiring a 15-year period before the expunction petition may be filed. Additionally, the Division of Motor Vehicles is not required to expunge records that are prohibited from being expunged by federal law requirements for motor vehicle records.
- **Technical and clarifying changes to reconcile S.L. 2009-510 (SB 262) and S.L. 2009-577 (HB1329).** – These sections make additional technical and clarifying changes necessary to reconcile the two expunction bills that passed in 2009.

The provisions relating to expunction of information by private entities and the Division of Motor vehicles become effective October 1, 2010. The remainder of the sections become effective October 1, 2010, and apply to petitions for expunction filed on or after that date. (SS)

Require Certain Sex Offenders to Register

S.L. 2010-174, Sec. 16 (HB 726, Sec. 16). See **Criminal Law and Procedure.**

Courts-Martial Amendments

S.L. 2010-193 (HB 1412). See **Military, Veterans, and Indian Affairs**.

Referrals to Existing Commissions/Committees

Unsecured Bonds

S.L. 2010-152, Secs. 10.1 and 10.2 (SB 900, Secs. 10.1 and 10.2) authorize the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee to study the topics listed below, and report findings with any recommended legislation, to the 2011 Regular Session of the General Assembly:

- Factors used in determining the release of defendants with unsecured bonds.
- Frequency of using unsecured bonds.
- Failure to appear rates under unsecured bonds.
- Amount of time and entity most likely to apprehend a defendant after bond forfeiture.
- Likelihood of converting forfeiture or judgment to revenue.

These sections became effective July 22, 2010. (HAP)

Extend Joint Select Committee on Preservation of Biological Evidence

S.L. 2010-152, Sec. 24 (SB 900, Sec. 24) amends the Session Law creating the Joint Select Committee on Preservation of Biological Evidence to extend the Committee until the convening date of the Regular Session of the 2011 General Assembly, or the filing of the Committee report, whichever occurs first. The Committee's charge includes a review of matters related to the preservation of DNA and biological evidence, including:

- Costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence.
- Emerging technologies with regard to the retention and preservation of biological evidence.
- Procedures for the interagency transfer of biological evidence.

This section became effective July 22, 2010. (HAP)

Chapter 8
Criminal Law and Procedure

Brenda Carter (BC), Drupti Chauhan (DC), Kara McCraw (KM), Jennifer McGinnis (JLM), Howard Alan Pell (HAP), Kelly Quick (KQ), Steve Rose (SR), Susan Sitze (SS)

Enacted Legislation

Susie's Law

S.L. 2010-16 (SB 254) increases the penalties for certain types of animal abuse.

The act increases the penalty for maliciously killing an animal by intentional deprivation of necessary sustenance from a Class A1 misdemeanor to a class H felony. Additionally, the penalty for maliciously torturing, mutilating, maiming, cruelly beating, disfiguring, poisoning, or killing an animal is increased from a Class I felony to a Class H felony.

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

Collect DNA Sample on Arrest

S.L. 2010-94 (HB 1403) enacts "The DNA Database Act of 2010." The act requires that a DNA sample be taken from any person arrested for an offense listed in the act, and amends the statutes that provide for a DNA sample upon conviction of all felonies. Currently, 23 states and the federal government have DNA upon arrest statutes.

The DNA samples taken upon arrest will be analyzed, and a record which can identify only the individual who provided the sample will be stored in the State's DNA Database. A search of all state databases against unknown DNA samples connected to crime scenes is conducted weekly by using the Combined DNA Index System (CODIS), administered and operated by the Federal Bureau of Investigation.

- Collection. – An arresting officer either takes, or arranges for another to take, a DNA sample from the person upon arrest, or when the person is fingerprinted at booking.
  - The sample is taken by cheek swab, unless a court authorizes that a blood sample be taken.
  - If the arrest was made without a warrant, the DNA sample may not be taken until a magistrate has found probable cause that a crime was committed, and that the arrested person committed it.
  - The offenses calling for a DNA sample include murder, manslaughter, rape or sex offenses, felony assaults with a deadly weapon or causing serious bodily injury, kidnapping or human trafficking, burglary offenses, arson, armed robbery, stalking, cyberstalking, and any offense which would require the person to register as a sex offender. The act applies to anyone arrested for attempting, soliciting, conspiring, or aiding and abetting another to commit a listed offense.
  - If a juvenile is charged for an offense covered under the DNA upon arrest statute, then a DNA sample is obtained when the matter is transferred to superior court.
  - It is a condition of pretrial release that a defendant provide fingerprints and, if the offense is listed in the act, a DNA sample.
- Expunction. – Records and samples relating to a defendant's DNA sample must be expunged by the prosecuting district attorney if (1) the charge is dismissed, (2) the defendant is acquitted of the charge, (3) the charge is not filed within a designated

time period, or (4) the defendant is guilty of a lesser-included misdemeanor that is not on the list of offenses contained in the act.

- If the charge is dismissed, there is an acquittal, or there is a conviction of a non-listed lesser-included misdemeanor, the prosecuting district attorney must initiate the process by: Verifying that a qualifying circumstance exists; signing a verification form if the State dismissed the charge, or obtaining a judge's signature on the form if the court dismissed the charge or there was an acquittal; and then forwarding the form to the State Bureau of Investigation (SBI). The State has 30 days to complete the verification form and send it to the SBI.
- If the DNA record and sample is not required to be kept under some other provision of law, the SBI expunges the record and sample from the State DNA Database and Databank. The expunction is to take place within 30 days of the SBI's receipt of the verification form, and a letter confirming the expunction is sent to the defendant. If the defendant's sample is not eligible for expunction, then a letter so indicating is sent to the defendant.
- Until June 1, 2012, if the charge is not filed within a designated time period (as opposed to the other qualifying circumstances), then the defendant must initiate the process by providing the district attorney with a request form for the expunction. On or after June 1, 2012, the request form requirement expires, and the State is responsible in all circumstances with initiating the process.
- The defendant may seek judicial review based on (i) the State's determination that the defendant is not eligible for expunction, or (ii) inaction on the request by the prosecuting attorney or the SBI within the prescribed time periods.
- If the DNA record and sample is not expunged within the prescribed time, then a database match of the defendant's DNA sample with an unknown sample, occurring after the expiration of the statutory period for expunction, is invalid and not admissible as evidence in a criminal proceeding against the defendant.
- A defendant's DNA sample contained in the DNA databank, which would otherwise be expunged, is exempt from expunction if it is part of an object which contains evidence relating to another person. The DNA record in the database would be expunged.

➢ Amendments. – The act makes several changes to existing laws:

- Amends definitions, including "DNA Sample" (to specifically include "cheek swabs"); "State DNA Database" (describes the various types of DNA records); and provides new definitions for "arrestee," "criminal justice agency," and "conviction."
- States the types of records that the Database shall store and maintain, including: Crime scene evidence; arrestees, offenders, and persons found not guilty by reason of insanity, who are required to submit samples; persons required to register as sex offenders; missing persons; unidentified persons or body parts; relatives of missing persons; and anonymous DNA profiles for forensic validation.
- Deletes the term "blood" to conform to the language in the section on testing to reflect the additional methods of DNA sampling provided in the Article.
- Clarifies that a defendant who is convicted but not sentenced to confinement, and who provides a sample that cannot be loaded into the State DNA database for any reason, is under a continuing order to provide a DNA sample.
- Increases the penalty for willfully disclosing identifiable information in the Database to an unauthorized person from a Class 1 misdemeanor to a Class H felony, as well as increasing the penalty in the same manner for a person who unlawfully obtains that information.
- Amends the statute relating to confidentiality of records to clarify that DNA records and samples are not public records; that the SBI is not required to

provide the State DNA Database as a discovery matter; that individual records and samples are discoverable under the rules of criminal procedure; and specifies the authorized purposes for which DNA records and samples may be released, including: Law enforcement identification purposes; criminal defense and appeal purposes; forensic validation studies; and establishment or maintenance of a population statistics database.

- Reporting. – The act contains several report and recommendation requirements.
  - The SBI is directed to report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report is to include a calendar year summary of the operations and expenditures associated with the DNA Database and Databank and specific data on the number of arrestee samples, matches, expunctions, and processing times.
  - The Department of Justice, in consultation with the Administrative Office of the Courts and the Conference of District Attorneys, is directed to study, develop, and recommend an automated procedure to facilitate the expunction process. The report must be made to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, on or before the effective date of the act.

This act becomes effective February 1, 2011. (HAP)

Ban Electronic Sweepstakes

S.L. 2010-103 (HB 80) prohibits the use of electronic machines or devices for conducting or promoting sweepstakes. The act makes it unlawful for any person to operate, or place into operation, an electronic machine or device to conduct a sweepstakes through the use of an entertaining display, or to promote a sweepstakes that is conducted through the use of an entertaining display. It is the intent of the act to prohibit any mechanism that seeks to avoid application of the act through the use of subterfuge or pretense. The act provides a Class 1 misdemeanor for a first offense, a Class H felony for a second offense, and a Class G felony for a third or subsequent offense. Each violation of the act is a separate offense. The act does not make unlawful any activity lawfully conducted on Indian lands pursuant to a Tribal-State Gaming Compact.

Provisions are made for the seizure and disposition of any electronic machines and devices prohibited in the act, and several technical changes are made to existing gaming definitions to clarify that additional forms of payment, such as debit cards and prepaid cards, are included in the definition.

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

Amend Felony Firearm Act/Clarify Britt Case

S.L. 2010-108 (HB 1260) amends the State Felony Firearms Act to create a process for persons who have been convicted of certain felonies to petition the court for restoration of firearms rights.

- The act establishes specific criteria that must be met in order to qualify for the restoration of firearms rights including the following: The person may have been convicted of one nonviolent felony only. A nonviolent felony does not include Class A, B1, or B2 felonies, and also does not include any Class C through I felony if the offense includes an assault, the person possessed or used a firearm in the commission of the offense, or the offense is one that requires the person to register as a sex offender.

- The person's citizenship rights must have been restored for at least 20 years prior to the petition.
- The person must not have been convicted of any violent misdemeanor since the felony conviction.
- The person must be a resident of North Carolina for at least one year prior to the petition.
- The person must submit fingerprints for a criminal background check.
- The court must deny the petition of any person who:
  - Is ineligible to possess firearms under a provision of law other than G.S. 14-415.1.
  - Is under indictment for a felony.
  - Is a fugitive from justice.
  - Is an unlawful user of drugs or alcohol.
  - Is or has been dishonorably discharged from the military.
  - Has been convicted or received a Prayer for Judgment Continued (PJC) for a violent misdemeanor.
  - Has received a PJC for another felony.
  - Is awaiting trial, appeal, or sentencing for a disqualifying crime.
  - Is currently subject to a domestic violence protective order or a civil no contact order.

The burden is on the petitioner to establish by a preponderance of the evidence that they are entitled to the restoration. If a petition is denied, the person may petition again after one year from the date of denial, or if the denial was based solely on the existence of a domestic violence protective order or civil no contact order, the person may petition again upon expiration of the order. If a petition is granted, the clerk of court must forward certified copies to the sheriff of the county in which the petitioner resides, the Department of Justice, and the national instant background check system index.

There is a $200 fee for filing the petition, unless the petitioner is indigent. Conviction of a subsequent felony after restoration of firearms rights results in an automatic revocation of the firearms rights restoration, and makes the person ineligible to have those rights again restored. The act provides a Class 1 misdemeanor for submitting false information in a petition, and conviction of this offense results in disqualification from further petitioning for the restoration of firearms rights.

Additionally, the act provides that the State Felony Firearms Act does not apply, and there is no disentitlement if a person is convicted of a felony pertaining to antitrust violations, unfair trade practices, or restraints of trade.

The act requires the Attorney General to submit a copy of the act to the U.S. Attorney General, the United States Department of Justice, and the federal Bureau of Alcohol, Tobacco, and Firearms for review to determine if a person can legally purchase and possess a firearm under federal law if this act would allow it under State law. The Attorney General shall report the response to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

The provision of this act requiring the Attorney General to submit this act to other agencies became effective July 20, 2010. The remainder of this act becomes effective February 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. (SS)

Require Certain Sex Offenders to Register

S.L. 2010-174, Sec. 16 (HB 726, Sec. 16) amends the effective date of a previous law, to require additional sex offenders convicted in another state to register in this State.

In 2006, the General Assembly amended the sex offender registration statutes to require any person who has a "final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state" to register in North Carolina as a sex offender. The effective date for this requirement was for all offenses committed on or after December 1, 2006, and to all individuals who move into this State on or after December 1, 2006.

This section changes the effective date for the registration requirement to include all offenses committed prior to, on, or after December 1, 2006, and all individuals who move into this State prior to, on, or after December 1, 2006. However, the applicability of the new effective date is limited to anyone who on or after October 1, 2010, is currently registered as a sex offender, is serving an active sentence, is on supervised probation, parole or post-release supervision, or is convicted of a felony.

This section becomes effective October 1, 2010. (SS)

Chapter 9
Education

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

Enacted Legislation

Public Schools

Reform Low-Performing Schools

S.L. 2010-1 (SB 704) authorizes the State Board of Education (SBE) to approve a local board of education's (local board) request to reform any school in its local school administrative unit (LEA) identified by the SBE as a continually low-performing school. The SBE is given authority to authorize local boards to adopt one of four reform models:

- Transformation model. – Requires the following areas be addressed in transforming the school:
  - Developing and increasing teacher and school leadership effectiveness.
  - Comprehensive instructional reform strategies.
  - Increasing learning time and creating community-oriented schools.
  - Providing operational flexibility and sustained support.
- Restart model. – Authorizes the local board to operate the school in one of the following ways:
  - With the same exemptions from statutes and rules as a charter school.
  - Under the management of an educational management organization selected through a rigorous review process.

  Schools operating under this model remain under the control of the local board, and employees assigned to the school remain employees of the LEA with the protections provided by statute for employment of public school teachers. The act clarifies that it should not be interpreted to increase the maximum number of charter schools authorized by statute and that no school authorized under the restart model will count against the authorized number of charter schools.
- Turnaround model. – Requires the following:
  - Replacing the principal, if the principal has been in that position for at least three years, and rehiring no more than 50% of the school staff.
  - Adopting a new governance structure at the school consistent with the School-Based Management and Accountability Program Article, Chapter 115C of the North Carolina General Statutes.
  - Implementing an instructional program aligned with the Standard Course of Study.
- School closure model. – Closes the school consistent with the existing statute for school closure and enrolls the students in other high-achieving schools within the LEA consistent with the laws concerning admission and assignment of students.

The SBE is required to adopt rules to develop requirements for the four models, and to establish a procedure implementing the section, including annual reporting requirements for authorized boards and a procedure for removing or continuing the authorization.

This act became effective May 27, 2010. (KM)

School Calendar Flexibility/Inclement Weather

S.L. 2010-10 (HB 636) creates an exception to the required 1,000 hours and 180 days of instruction covering at least nine calendar months for local school administrative units (LEAs). If a LEA missed more than 20 instructional days during the 2009-2010 school year due to inclement weather and the local board of education scheduled 1,000 hours of instruction on less than 180 days, then the LEA is deemed to have a minimum of 180 days of instruction and employees must be compensated accordingly.

Charter schools that missed more than 20 instructional days due to inclement weather during the 2009-2010 school year are exempt from the requirement to provide 180 days of instruction. These schools are instead required to provide a minimum of either 180 days or 1,000 hours of instruction covering at least nine calendar months.

This act became effective June 23, 2010, and applies only to the 2009-2010 school year. (SK)

North Carolina Virtual Public Schools Allotment Formula

S.L. 2010-31, Sec. 7.4 (SB 897, Sec. 7.4), as amended by S.L. 2010-123, Sec. 3.2A (SB 1202, Sec. 3.2A), requires the State Board of Education (SBE) to implement an allotment formula for the North Carolina Virtual Public Schools (NCVPS) beginning with the 2010-2011 school year. The formula must create a sustainable source of funding that increases commensurate with student enrollment, and recognizes the extent to which projected enrollment in e-learning courses affects funding required for other allotments based on average daily membership (ADM). Specific steps for implementation of the formula by the Department of Public Instruction are established.

The funds provided through the formula must be the only source of funds for the NCVPS, and the NCVPS must provide only high school courses and may not provide any courses in physical education. NCVPS must use the funds to provide courses at no cost to all students in North Carolina enrolled in public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs. The Director of the NCVPS must continue to ensure that course quality standards are established and met, that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the NCVPS to eliminate course duplication, and that courses offered through the NCVPS are aligned to the North Carolina Standard Course of Study.

This section became effective July 1, 2010. (KM)

More at Four Program

S.L. 2010-31, Sec. 7.5 (SB 897, Sec. 7.5) directs the Department of Public Instruction (DPI) to continue to implement More at Four in all counties to serve four-year-olds at risk of school failure. More at Four classrooms are operated in public schools, Head Start programs, and licensed child care facilities according to standards adopted by the State Board of Education (SBE) and under the supervision of the Office of Early Learning (OEL) within DPI.

The OEL must specify program standards and requirements addressing:

- Early learning standards and curricula.
- Teacher education and specialized training.
- Teacher in-service training and professional development.
- Maximum class size.
- Staff-child ratio.
- Screening, referrals, support services.
- Meals.
- Mentoring of sites to demonstrate adherence to standards.

The SBE must submit an annual report by March 15 to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the House and Senate Appropriations Committees, the Office of State Budget and Management, and the Fiscal Research Division on:

- Number of children participating in State prekindergarten.
- Number of participating children in State prekindergarten who have not been served in other early education programs.
- Expected State prekindergarten expenditures and the source of local contributions.
- Results of an annual program evaluation.

The OEL must develop a new funding model to begin in the 2010-2011 fiscal year that requires local contributions and must implement a cap on administrative program funding.

The OEL must contract with an independent research organization to produce an annual longitudinal review of children who complete the program every other year and shall report on their progress until the end of the sixth grade. The review also must study children of the same grade level and demographic who did not participate in a More at Four program until they complete the sixth grade. The review must be presented to the Joint Legislative Education Oversight Committee annually by January 31.

DPI shall provide Division of Child Development staff with the necessary training to monitor compliance with the More at Four Program in private settings.

This section became effective July 1, 2010. (SK)

Career and College-Ready, Set, Go!

S.L. 2010-31, Sec. 7.8 (SB 897, Sec. 7.8) directs the State Board of Education to work with the member institutions of the Education Cabinet and the Joint Governing Boards to focus funding and program priorities to ensure North Carolina students graduate prepared to successfully pursue a career or further education. Each Education Cabinet institution must prioritize the Governor's Ready, Set, Go! Initiative and, to the extent possible, ensure all PK-20 students:

- Are prepared to successfully progress in PK-20 education through:
  - Establishment of the Governor's Child Advocacy Council.
  - Investment in early child development programs such as Smart Start and More at Four.
  - Investment in smaller class sizes in K-3.
  - Implementation of student diagnostics in grades K-3 and 5 to ensure grade-level reading, writing, and math skills.
  - Implementation of student diagnostics for career and college readiness in grades 8 and 11.
  - Implementation of Student Learning Conditions Survey for grades 7, 9, and 11 that is aligned with the Teacher Working Conditions Survey.
- Receive clear standards and high expectations, and benefit from teachers and principals that can most effectively help the students reach the standards by:
  - Adoption of the State-led National Common Standards, including Career and College Ready Skills.
  - Evaluation of teacher preparation programs to identify best practices and programs that produce effective teachers.
  - Increased access to virtual learning opportunities for students and teachers.
  - Increased access to Science, Technology, Engineering, and Mathematics opportunities.
  - Development of leadership academies to recruit and prepare effective principals.
  - Development of a PK-20 data system to provide comprehensive information on students.
  - Reduction and eventual elimination of low-performing schools.

- Job-imbedded professional development for teachers and principals.

➢ Fully understand and complete the prerequisites for the career, certification, or degree of choice that promotes workforce success, including:
- Development of academic boot camps for high school students who need additional support in reading, composition, and math.
- Consolidation of high school transition courses to provide more college-level or career and technical courses.
- Increased access to virtual college-level and specific career and technical courses for high school students.
- Alignment between high school and college curricula.
- Implementation of North Carolina Success to increase the number of certificates and degrees in higher education.

The Education Cabinet must report to the Office of the Governor, the Joint Governing Boards, and the Joint Legislative Education Oversight Committee on its progress by January 15, 2011.

This section became effective July 1, 2010. (DC)

School Calendar Pilot Program

S.L. 2010-31, Sec. 7.10 (SB 897, Sec. 7.10) extends for an additional school year the State Board of Education (SBE) school calendar pilot program that allows for 162 days and 1,000 hours of instruction in the Wilkes County schools. The pilot was established for the 2009-2010 school year to determine to what extent a local school administrative unit can save money by consolidating the school calendar.

The SBE must report to the Joint Legislative Education Oversight Committee by March 15, 2011, on the administration of the pilot program, cost-savings realized, and the impact on student achievement.

This section became effective July 1, 2010. (SK)

National Board for Professional Teaching Standards Funds

S.L. 2010-31, Secs. 7.11(a) and (b) (SB 897, Secs. 7.11(a) and (b)) clarifies that when a teacher repays the application fee for National Board for Professional Teaching Standards Certification to the State Education Assistance Authority, the commencement of the cash repayment must begin 12 months following the disbursement of the loan funds. The State Education Assistance Authority may forgive the loan upon the death of the teacher or upon an injury deemed to leave the teacher totally and permanently disabled.

See also **Studies** subheading in this chapter.

This section became effective July 1, 2010. (DC)

Driver Education

S.L. 2010-31, Sec. 7.12 (SB 897, Sec. 7.12) requires the Highway Safety Research Center Institute of the University of North Carolina at Chapel Hill to work in collaboration with the Department of Public Instruction and the Governor's Highway Safety Commission to create a standard curriculum to be used for the Driver Education Program in the Department of Public Instruction. The curriculum must be ready for use in the fall of the 2011 school year and must be used for all driver education programs funded with State funds.

This section became effective July 1, 2010. (KM)

Probationary Teachers

S.L. 2010-31, Sec. 7.14 (SB 897, Sec. 7.14) provides the following provisions for probationary teachers who are non-renewed due to a decrease in positions because of a decrease in funding, enrollment, or district reorganization (decreased positions) who are later rehired by the same school district:

- If a probationary teacher in a full-time permanent position is non-renewed, due to decreased positions, but is subsequently rehired by the same school system within three years, the intervening years when the teacher was not employed by the local school administrative unit (LEA) shall not be deemed to constitute (i) a consecutive year of service for the teacher, or (ii) a break in the continuity of years of service.
- If at the time of the teacher's non-renewal due to decreased positions the teacher was eligible for career status, and the local board subsequently rehires the teacher within three years, the teacher will be eligible for a career status decision after one additional year of employment.
- Unless the local superintendent unilaterally grants this benefit pursuant to a policy adopted by the local board of education for this purpose, a probationary teacher is entitled to such benefit only if, upon being rehired, the teacher notifies the head of human resources for the LEA in writing within 60 calendar days after the first day of employment upon being rehired that the teacher was non-renewed because of decreased positions, and therefore the teacher's non-renewal did not constitute a break in service for purposes of determining eligibility for career status. A LEA shall notify a teacher of the 60-day deadline through some method reasonably calculated to provide the teacher actual notice within 30 calendar days after the first day of employment for the rehired teacher.
- The burden is on the teacher to submit information establishing that the teacher was non-renewed because of decreased positions. If the LEA fails to provide timely notice to the teacher, the teacher's obligation to notify the LEA within 60 days does not commence until such time that the teacher is notified of the 60-day deadline.
- The superintendent or designee will inform the teacher whether the teacher qualifies for this benefit within a reasonable period of time after receiving the information submitted by the teacher. This decision is final, and the teacher has no right to a hearing or appeal, except that the teacher may petition the local board of education in writing within 10 calendar days after receiving the decision of the superintendent or designee; and the local board or local board panel shall review the matter on the record and provide the teacher a written decision.
- Notwithstanding any other provision of law, no appeal to court or otherwise is permitted in regard to this benefit, and the benefit creates no private right of action or basis for any liability on the part of the school system or any re-employment rights for a non-renewed probationary teacher.
- This provision also applies to a probationary teacher in a full-time permanent position who resigns effective the end of the school year in good standing after receiving documentation that the teacher's position may be eliminated because of decreased positions, who is subsequently rehired by the same school system.

This section became effective June 30, 2010, and applies to probationary teachers rehired by the same school district beginning in the 2010-2011 school year. (SK)

Uniform Budget Format

S.L. 2010-31, Sec. 7.17 (SB 897, Sec. 7.17) as amended by S.L. 2010-123, Sec. 3.2 (SB 1202, Sec. 3.2) makes changes to the Uniform Budget Format statute and makes clarifications regarding per pupil local current expense appropriation transfers to charter schools.

The Uniform Budget statute requires that the uniform budget format contain the State Public School Fund, the local current expense fund, and the capital outlay fund. This section provides that other funds may be used to account for reimbursements, including indirect costs, fees for actual costs, tuition, sales tax revenues distributed using the ad valorem method, sales tax refunds, gifts and grants restricted as to use, trust funds, federal appropriations made directly to local school administrative units, funds received for prekindergarten programs, and special programs. In addition, the appropriation or use of fund balance or interest income by a local school administrative unit cannot be construed as a local current expense appropriation.

Current law provides that a local school administrative unit in which a child resides must transfer to the charter school that the child attends an amount equal to the per pupil local current expense appropriation to the local school administrative unit. This section further provides that any local school administrative unit that (i) did not fully comply with this requirement regarding the transfer of per pupil local current expense appropriations for the fiscal year prior to July 1, 2010, and (ii) is subject to a judgment, court order, or binding settlement agreement arising from that noncompliance may make the required payments over a period not to exceed three years.

None of the provisions of this section may be construed to invalidate any budget resolution or budget amendment approved by a local board of education regarding the appropriation or transfer of revenue to any other fund that was approved for use by the North Carolina Department of Public Instruction and the Local Government Commission.

The provision addressing the Uniform Budget Format became effective July 1, 2010. The provision addressing per pupil local current expense appropriation transfers became effective July 1, 2010, and applies beginning with the 2010-2011 school year. (DC)

Dropout Prevention Grants

S.L. 2010-31, Sec. 7.19 (SB 897, Sec. 7.19) modifies existing requirements for the awarding and reporting of dropout prevention grants (grants) as follows:

- Requires grants of $500,000 to be awarded to the following:
  - Communities in Schools of North Carolina, Incorporated, to expand service to existing programs, establish new programs, and support placement of graduation coaches or creation of new Performance Learning Centers.
  - North Carolina Congress of Parents and Teachers, Incorporated, to implement the PTA Parental Involvement Initiative at additional sites.
  - The Greater Winston-Salem Chamber of Commerce Foundation, Incorporated, for the implementation of the Community Education Collaborative program.
- Requires the Committee on Dropout Prevention (Committee) to identify a minimum of three additional recipients of grants that the Committee feels show promise as statewide models for dropout prevention interventions, and report on those selections to the Joint Legislative Education Oversight Committee (Education Oversight) and the Joint Legislative Commission on Dropout Prevention and High School Graduation (Commission) by March 15, 2011.
- Requires the Committee to award grants annually no later than November 1.
- Requires the Committee to report annually by March 1 to Education Oversight and the Commission on awarded grants.
- Requires grant recipients to report to the Committee by January 31 annually, and eliminates a September 30 reporting requirement for grant recipients.
- Eliminates the termination date for the Committee, and establishes an expiration date of December 1, 2010, for the terms of initial appointees of the Committee. Subsequent appointees will serve four-year terms.
- Eliminates a final reporting requirement for the Commission to Education Oversight and the General Assembly before the convening of the 2011 Session and a requirement for the termination of the Commission upon the filing of that report.

Provides that the Commission may report findings, recommendations, and proposed legislation to Education Oversight and the General Assembly.

This section became effective July 1, 2010. (KM)

Cooperative and Innovative High Schools

S.L. 2010-31, Secs. 7.21(a) and (b) (SB 897, Secs. 7.21(a) and (b)) adds a five-year career academy operating within an existing high school to the current models of cooperative innovative high school programs. These programs must continue to use the existing school code assigned by the Department of Public Instruction and maintain records to identify and evaluate students in the program distinct from the general school population.

See also **Studies** subheading in this chapter.

This section became effective June 30, 2010, and applies beginning with the 2010-2011 school year, excepted as otherwise provided. (SK)

Disadvantaged Student Supplemental Funding

S.L. 2010-31, Sec. 7.23 (SB 897, Sec. 7.23) provides that in its determination on whether to approve a local school administrative unit's plan for the expenditure of funds allocated to it for disadvantaged student supplemental funding, the State Board of Education must take into consideration the extent to which the local school administrative unit's policies or expenditures have contributed to, or are contributing to, increased segregation of schools on the basis of race or socioeconomic status.

This section became effective July 1, 2010. (DC)

Higher Education Courses for High School Students

S.L. 2010-31, Sec. 7.24 (SB 897, Sec. 7.24), as amended by S.L. 2010-123, Sec. 3.1 (SB 1202, Sec. 3.1), establishes the intent of the General Assembly to implement a funding formula in the 2011-2012 school year to provide money to local school administrative units (LEAs) to pay tuition of high school students taking higher education courses. The section also establishes the General Assembly's intent to eliminate the current tuition waiver for high school students at community colleges effective July 1, 2011, except for students in cooperative innovative high school programs.

Section 7.24 sets out specific instructions for the 2011-2012 school year on transfers of funds between the North Carolina Community College System General Fund, the General Fund Appropriation for Learn and Earn Online, and the State Public School Fund to the Department of Public Instruction for distribution to LEAs for the sole purpose of paying the tuition of high school students taking higher education courses for which tuition is required.

Section 7.24 requires that, beginning with the 2010-2011 school years, courses provided in general education, except for mathematics, science, and technology, physical education, and college success skills courses offered to high school students will no longer generate State funding through budget FTE, or receive reimbursement from the Department of Public Instruction; but institutes of higher education that offer those courses to high school students may charge an amount sufficient to cover the costs of the courses. This does not apply to courses provided to students of Early and Middle College High Schools.

This section became effective July 1, 2010. (KM)

Review of The University of North Carolina Science, Technology, Engineering, and Mathematics Programs

S.L. 2010-31, Sec. 9.7 (SB 897, Sec. 9.7). See **Universities** in this chapter.

Office of Education Services/Transfer of Residential and Preschools for the Deaf and Blind

S.L. 2010-31, Sec. 10.21A (SB 897, Sec. 10.21A) dissolves the Office of Education Services, Department of Health and Human Services (DHHS), and transfers the following to the Department of Public Instruction (DPI):

- North Carolina School for the Deaf.
- Eastern North Carolina School for the Deaf.
- Governor Morehead School for the Blind.
- Early Intervention Services – Preschool.
- Governor Morehead Preschool programs.

The transfers are effective July 1, 2011.

The State Board of Education (SBE), in conjunction with DHHS, must implement a transition plan and submit the plan to the Joint Legislative Commission on Governmental Operations Subcommittee on Education/Health, the House and Senate Appropriations Committees, and the Fiscal Research Division of the General Assembly for consideration no later than December 1, 2010.

The Secretary of DHHS, in consultation with the Chair of the SBE, must appoint an interim superintendent within DHHS no later than October 1, 2010. No later than October 1, 2010, the SBE must establish a search committee to hire a superintendent to oversee operations of the two Schools for the Deaf and the School for the Blind within DPI. The search committee must review applications and make its final recommendations to the SBE by May 1, 2011. The SBE must hire a superintendent to assume oversight of the residential schools not later than June 1, 2011.

Effective October 1, 2010, positions in the Office of Education Services' Central Administration and Exceptional Children Support, DHHS, are eliminated; and positions in the Resource Support, DHHS VI Outreach, and Deaf/Blind programs are transferred to the Exceptional Children Division of DPI.

This section became effective July 1, 2010, except as otherwise provided. (SK)

Furloughs Authorized/Public Schools

S.L. 2010-31, Sec. 29.1 (SB 897, Sec. 29.1) authorizes local boards of education to implement furloughs of State-funded public school employees to offset the local school administrative unit (LEA) funding flexibility adjustment, and requires LEAs to cooperate with the Department of Public Instruction in the implementation of a furlough, if required.

Public school employees furloughed under this section must be held harmless as to their retirement and other benefits that normally accrue as a result of employment, and local boards of education must report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan information about the furlough, affected positions, and certifications regarding the purpose of the furlough. Furloughs implemented under this section do not constitute demotions.

Public school employees not paid out of State funds must receive the same reduction in pay as State-paid employees in the event a furlough is enacted by a LEA.

The State Board of Education (SBE) is required to adopt emergency rules for implementation within 30 days of June 30, 2010. The emergency rules remain in effect until

June 30, 2011. The rules must be used by local boards of education in designating the times public school employees may be subject to furlough. The rules must include the following:

- Employees who work only on instructional days and employees who earn an annual salary of $32,000 or less are not subject to furlough.
- A furlough for other employees must be for the same number of days for all such employees and must be for a maximum of two days.
- No teacher is subject to a furlough on an instructional day or a protected work day.
- A local board of education must have a public hearing and must disclose the LEA's finances before the local board of education implements a furlough.
- The LEA must cut all bonus pay before it imposes a furlough.
- A LEA may spread the salary or wage reduction for furloughed employees over the contract period in order to lessen the impact on the employees.
- All savings realized as a result of a furlough must be used to offset the LEA funding flexibility adjustment.
- A county in which a LEA implements a furlough pursuant to this section must not supplant existing local current expense funds for schools.
- Each local board of education must report to the SBE on the details of any furlough implemented by the LEA and certify that the furlough complied with the provisions of this section and the rules adopted by the SBE.

This section became effective June 30, 2010, and expires June 30, 2011. (KM)

No High School Graduation Project Required

S.L. 2010-33 (HB 1864) prohibits the State Board of Education from requiring a high school graduation project as a requirement for graduation. However, local boards of education may still require that their students complete a high school graduation project.

This act became effective July 1, 2010. (SK)

Comprehensive Arts Education Plan

S.L. 2010-34 (SB 66) directs the State Board of Education to appoint a task force to create a Comprehensive Arts Education Development Plan for the public schools. The task force members must be from the Department of Public Instruction and the Department of Cultural Resources. In addition, the task force must include at least one member of the House of Representatives appointed by the Speaker and at least one member of the Senate appointed by the President Pro Tempore.

The task force must consider ways to more fully implement arts education in public schools to include the following:

- An arts requirement in grades K-5.
- Availability of all four arts disciplines (theatre, music, visual arts, and dance) in grades 6-8, with students required to take at least one arts discipline each school year.
- Availability of electives in the arts at the high school level.

The task force also must consider a high school graduation requirement in the arts and the further development of the A+ Schools Program. The task force is directed to make recommendations to the Joint Legislative Education Oversight Committee by December 1, 2010.

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

Honors Courses in Healthful Living Classes

S.L. 2010-35 (HB 901) requires the State Board of Education to develop or identify academically rigorous honors-level healthful living education courses for high school students. The courses must:

- Be more rigorous than standard-level courses.
- Include advanced content.
- Provide multiple opportunities for students to take greater responsibility for their learning.
- Require higher quality work than standard courses.

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

Amend Sunset/Children with Disabilities

S.L. 2010-36 (HB 1683) delays to June 1, 2013, the sunset of a provision which provides that a local educational agency is deemed to have a "basis of knowledge" that a child is a child with a disability if, prior to the behavior that precipitated the disciplinary action, the behavior and performance of the child clearly and convincingly establishes the need for special education. The statute specifically states that past disciplinary infractions on their own do not constitute clear and convincing evidence that there was a need for special education.

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

Education Cabinet Establish Science, Technology, Engineering, and Mathematics Priority

S.L. 2010-41 (SB 1198) directs the Education Cabinet to set science, technology, engineering, and mathematics (STEM) education priorities by doing all of the following:

- Setting as a priority an increase in the number of students earning postsecondary credentials in the STEM fields to reduce the gap between needed credentialed workers and available jobs in those fields by 2015.
- Encouraging and monitoring progress of cooperative efforts between secondary schools and institutions of higher education (IHEs) to prepare students for postsecondary study of STEM subjects and identify and support IHE's efforts to increase the number of students seeking and successfully completing postsecondary certificates or degrees in STEM fields.
- Determining measurements for assessing the number of available jobs in the State in STEM fields and the number of students earning postsecondary credentials in those fields at all IHEs in the State.
- Identifying federal, State, and local funds that may be used to support this priority, as well as pursuing private funds that could be used to support this priority.

The Education Cabinet must report annually on its activities under this act to the Joint Legislative Education Oversight Committee and to the JOBS Commission by November 1, 2011, on established measurements, efforts to reduce the identified gap, and sources of funding to support these efforts.

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

Substitute Teacher Unemployment

S.L. 2010-71 (HB 1676) requires that no substitute teacher or other substitute personnel be considered unemployed for the days or weeks when not called to work, unless the individual is or was employed as a full-time substitute during the period of time for which the individual is

requesting benefits. Full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more.

This act also repeals statutory sections related to substitute teacher unemployment enacted in 2009, which the U.S. Department of Labor has indicated are not in conformity with federal unemployment law.

This act became effective July 8, 2010. (KM)

Require Use Education Value Added Assessment System in Schools

S.L. 2010-110 (HB 1669) requires school improvement teams to use the Education Value Added Assessment System (EVAAS) or a compatible and comparable system approved by the State Board of Education for analyzing student data to identify methods to improve student performance.

This act became effective July 20, 2010. (DC)

Four-Year Cohort Graduation Rate

S.L. 2010-111, Sec. 1 (SB 1246, Sec. 1) directs the State Board of Education (SBE), prior to the beginning of the 2010-2011 school year, to develop a growth model that establishes annual goals for continuous and substantial improvement in the four-year cohort graduation rate for local school administrative units (LEAs), establishes as a short-term goal that LEAs must meet the annual four-year cohort graduation rate improvement goals beginning with the graduating class of 2011, and establishes as long-term minimum goals a statewide four-year cohort graduation rate of 74% by 2014, 80% by 2016, and 90% by 2018, and a long-term goal with benchmarks and recommendations to reach a statewide four-year cohort graduation rate of 100%.

The SBE must annually report to the Joint Legislative Education Oversight Committee by November 15 on these goals, benchmarks, and recommendations, which must appropriately differentiate for students with disabilities and other specially identified subcategories within each four-year cohort. The report must include goals and benchmarks by LEA, the strategies and recommendations for achieving the goals and benchmarks, evidence or data supporting the strategies and recommendations, and the identity of persons employed by the SBE who are responsible for oversight of LEAs in achieving the goals and benchmarks.

This section became effective July 20, 2010. (KM)

Student Admission

S.L. 2010-111, Sec. 2, (SB 1246, Sec. 2) permits a child to be enrolled for initial entry into the public schools if the child has not reached the age of five on or before August 31, but would be eligible to attend school in another state and all of the following apply:

- The child's parent is a legal resident of North Carolina who is an active member of the uniformed services assigned to a permanent duty station in another state.
- The child's parent is the sole legal custodian of the child.
- The child's parent is deployed for duty away from the permanent duty station.
- The child resides with an adult who is a domiciliary of a local school administrative unit in North Carolina as a result of the parent's deployment away from the permanent duty station.

This section became effective July 20, 2010. (KM)

School Absence for Religious Holidays

S.L. 2010-112 (HB 357) directs the State Board of Education (SBE), the State Board of Community Colleges (SBCC), and the Board of Governors of The University of North Carolina (BOG) to adopt rules or policies requiring schools to permit excused absences for religious observances.

The SBE must include in its rules regarding absences the requirement that principals authorize a minimum of two excused absences each academic year for religious observances required by the student or the student's parent's faith. Parents may be required to provide reasonable written notice of the absence request, and the student must be given the opportunity to make up missed tests or work.

The SBCC must direct community colleges to adopt a policy to authorize a minimum of two excused absences each academic year for religious observances required by the student's faith. The student may be required to provide reasonable written notice of the absence request, and the student must be given the opportunity to make up missed tests or work.

The BOG must direct constituent institutions to adopt a policy to authorize a minimum of two excused absences each academic year for religious observances required by the student's faith. The student may be required to provide reasonable written notice of the absence request, and the student must be given the opportunity to make up missed tests or work.

The act also requires public schools to instruct students on the significance of Memorial Day. The SBE must report to the Joint Legislative Education Oversight Committee by January 15, 2011, on the instructional programs developed to instruct students on the significance of Memorial Day.

This act became effective July 20, 2010, and applies beginning with the 2010-2011 academic year. (DC)

Modify Good Cause Waivers

S.L. 2010-114, Sec. 1 (HB 593, Sec. 1) adds alternative criterion which may qualify a local school administrative unit (LEA) for a "good cause" waiver from the school opening and closing dates under the school calendar law. The alternative criterion requires that schools in any LEA in a county have been closed for all or part of eight days per year during any four of the last ten years because of severe weather conditions. A school is deemed to be closed for part of a day if it is closed for two or more hours.

This act became effective July 20, 2010, and applies beginning with the 2010-2011 school year. (KM)

Voluntary Shared Leave Nonfamily Sick Leave Donations

S.L. 2010-139 (HB 213). See **State Government**.

Corporal Punishment and Children with Disabilities

S.L. 2010-159 (HB 1682) prohibits the use of corporal punishment on a student with a disability if the student's parent or guardian has stated in writing that corporal punishment shall not be administered on the student.

Local boards of education are required to annually report to the State Board of Education on the number of times corporal punishment was administered. The report must be in compliance with the federal Family Educational Rights and Privacy Act to ensure that students are not personally identifiable, and must include the following information:

- The number of students who received corporal punishment and the reason for the administration of corporal punishment for each of those students.

- The number of students who received corporal punishment who were also students with disabilities and eligible to receive special education and related services under IDEA.
- The grade level of the students who received corporal punishment.
- The race and ethnicity of the students who received corporal punishment.

This act became effective July 23, 2010, and applies beginning with the 2010-2011 school year. (SK)

Fitness Testing in Schools

S.L. 2010-161 (HB 1757) directs the State Board of Education to adopt guidelines for the development and implementation of evidence-based fitness testing for students in grades K-8.

This act became effective July 23, 2010. Implementation of the guidelines must begin in the 2011-2012 school year. (KM)

Early Identification and Intervention for At-Risk Students

S.L. 2010-162 (SB 1248) requires local school administrative units to identify students, starting no later than the fourth grade, who are not successfully moving toward grade promotion and graduation and to develop a personal education plan for those students. Local school administrative units shall annually certify their compliance with the requirement. The State Board of Education must periodically review the data and report on the progress of the identified students to the Joint Legislative Education Oversight Committee.

This act became effective July 23, 2010. (SK)

Safe Schools Act

S.L. 2010-163 (HB 1377) provides that if a career employee is recommended for dismissal and resigns without the written agreement of the superintendent, the following must occur:

- The superintendent must report the matter to the State Board of Education (SBE).
- The employee is deemed to have consented to (1) placement of the written notice of intention to dismiss in the employee's personnel file, and (2) the release, upon request from prospective employers, of the fact that the superintendent has reported the employee to the SBE.
- The employee is deemed to have voluntarily surrendered the employee's certificate pending SBE investigation, and the certificate surrender must not exceed 45 days from the date of resignation.
- The SBE must start the investigation within five working days of the superintendent's written notice and must make a final determination on revoking or suspending the certificate within 45 days from the date of resignation. Cessation of the certificate surrender does not prevent further appropriate SBE action.

This act became effective July 30, 2010, and applies to career employees who resign on or after that date. (SK)

Additional Flexibility/Cooperative Innovative High Schools

S.L. 2010-182 (SB 1201) provides additional operating flexibility to Cooperative Innovative High Schools by clarifying that these programs have the same exemptions from statutes and rules as charter schools, except for those pertaining to personnel.

This act became effective August 3, 2010, and applies beginning with the 2010-2011 school year. (SK)

State Board of Education Members Ex Officio to Economic Development Commission

S.L. 2010-184 (SB 1244) makes the State Board of Education members representing the following education districts ex officio non-voting members of the following economic development commissions:

- Education District 1: North Carolina's Northeast Commission.
- Education District 2: North Carolina's Eastern Region.
- Education District 3: Research Triangle Regional Partnership.
- Education District 4: Southeastern North Carolina Regional Economic Development Commission.
- Education District 5: Piedmont Triad Partnership.
- Education District 6: Charlotte Regional Partnership, Incorporated.
- Education Districts 7 and 8: Western North Carolina Regional Economic Development Commission.

For the three economic development regions not created in statute (Charlotte Regional Partnership, Piedmont Triad Regional Partnership, and Research Triangle Regional Partnership), the act makes inclusion of the State Board of Education member as an ex officio non-voting member on the Commission a condition for the receipt of State funds.

The act also adds the Secretary of the Department of Cultural Resources as an ex officio non-voting member of the Economic Development Board located within the Department of Commerce.

This act became effective August 3, 2010. (DC)

Local Education Agency Operational Leases

S.L. 2010-196, Sec. 3 (HB 1292, Sec. 3) expands the use of operational leases of real or personal property entered into by local boards of education for use as school buildings or school facilities to include new or existing buildings. Local boards of education also are authorized to enter into contracts for the construction of leased property under the same requirements as contracts for repair or renovation of leased property. Any construction, repair, or renovation work undertaken or contracted by a private developer is subject to the statutory public contract requirements.

This section became effective July 1, 2010, and applies to contracts entered into on or after that date. (KM)

Higher Education

Higher Education Courses for High School Students

S.L. 2010-31, Sec. 7.24 (SB 897, Sec. 7.24). See **Public Schools** in this chapter.

Success North Carolina Report

S.L. 2010-31, Sec. 9.16 (SB 897, Sec. 9.16) directs The University of North Carolina General Administration and the Community College System to report by December 1, 2010, to the Joint Legislative Education Oversight Committee on the progress of implementing Success North Carolina, a collaborative effort between The University of North Carolina and the North Carolina Community College System to increase the number of North Carolinians with college degrees and workplace relevant credentials.

This section became effective July 1, 2010. (SK)

Amend Tuition Waiver

S.L. 2010-31, Sec. 9.26 (SB 897, Sec. 9.26) modifies authorized tuition waivers for certain individuals attending the constituent institutions of The University of North Carolina and the community colleges to cover the following:

- An eligible child whose parent is a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty until that child reaches the age of 24, and provides that the waiver may not exceed 54 months if the child is seeking a baccalaureate degree.
- An eligible child who was a ward of the State of North Carolina until that child reaches the age of 24.

This section became effective July 1, 2010. (KM)

Amend State Education Assistance Authority Board Membership

S.L. 2010-109 (SB 1323) amends the number and composition of the Board of Directors (Board) of the State Education Assistance Authority (SEAA), as well as the process of removal for members of the Board.

The act increases the number of Board members from seven to nine. The act changes the composition of the membership of the Board by providing that while the Governor continues to appoint seven members, they must meet the following criteria:

- Two must have expertise in finance.
- Three must have expertise in secondary or higher education.
- One must be a public member with an interest in higher education.
- One must be a chief financial officer from an independent college or university that is a member institution of the North Carolina Independent Colleges and Universities, Incorporated, appointed upon recommendation of that organization.

A gubernatorial appointment continues to be for a four-year term or until a successor is appointed and duly qualified. The two new ex officio members are: (i) the chief financial officer of The University of North Carolina and (ii) the chief financial officer of the North Carolina Community College System.

The act clarifies the method for removing appointed members from the Board by providing that the Governor may remove any appointee from the board for misfeasance, malfeasance, or nonfeasance. Finally, the act provides that members currently on the Board may complete the terms for which they were appointed. Gubernatorial appointments for successors to the current members must satisfy the membership criteria and categories set out in the act.

This act became effective July 20, 2010. (DC)

School Absence for Religious Holidays

S.L. 2010-112 (HB 357). See **Public Schools** in this chapter.

Community Colleges

State Aid Budget Flexibility

S.L. 2010-31, Sec. 8.2 (SB 897, Sec. 8.2) allows a local community college to use all State funds allocated to it, except literacy funds and customized training funds, for any authorized purpose that is consistent with the college's Institutional Effectiveness Plan (Plan).

Each local community college must include in its Plan a section on how funding flexibility allows the college to meet the demands of the local community and to maintain a presence in all previously funded categorical programs.

This section became effective July 1, 2010. (DC)

Education for Prison Inmates

S.L. 2010-31, Sec. 8.3 (SB 897, Sec. 8.3) limits the use of funds appropriated for prison inmates to those in State prisons and establishes priority uses and limitations on that funding. Priority must be given to restoring basic skill courses funding, with remaining funds used for continuing education and curriculum courses related to job skills training. Funds may not be used for Associates degrees. All course offerings approved for State prison inmates must be tied to clearly identified job skills, transition needs, or both. Courses may be offered in federal prisons or local jails on a self-supporting basis.

The Department of Correction and the Community College System Office must report to the 2011 General Assembly on:

- Implementation of the new funding structure and requirements.
- Strategies for implementing recommendations to:
  - Enhance measurable goals, objectives, and outcomes.
  - Enhance and standardize data collection.
  - Strengthen the continuum of programming from entry to exit, based on assessment of skills and needs.
  - Give individuals the opportunity to use specific skills through work assignments that meet system needs.
  - Tailor programs to specific inmate needs.
  - Increase Cognitive Behavioral Interventions (CBI) courses.
  - Develop an offender-specific human resources development course.
  - Explore additional funding sources.
  - Explore a federal grant for wiring courses.
- Strategies for reasonably limiting the number of courses an individual takes while in prison.

This section became effective July 1, 2010. (KM)

Tuition Waivers

S.L. 2010-31, Sec. 8.4 (SB 897, Sec. 8.4) amends the courses for which the State Board of Community Colleges can waive tuition and registration fees. These now include:

- Training courses for municipal, county, or State law enforcement officers.
- One noncredit course per academic semester for senior citizens age 65 or older who qualify as legal North Carolina residents.
- Human resources development courses for any person who (1) is unemployed; (2) has received notification of a pending layoff; (3) is working and is eligible for the Federal Earned Income Tax Credit; or (4) is working and earning wages at or below 200% of the federal poverty guidelines.
- Programs for prison inmates.

Any federal law enforcement officer whose permanent duty station is in the State shall be eligible for in-State tuition for law enforcement training courses.

The Community College System Office must report to the 2011 General Assembly on the number and cost of courses taken by State law enforcement officers compared to the courses taken by local law enforcement officers.

The Fiscal Research Division, in consultation with the Community College System Office, must make a comprehensive study of current authorized tuition waivers and report to the 2011 General Assembly on any waivers that should be modified or abolished.

This section became effective July 1, 2010. (SK)

Community College Financial Aid Loans

S.L. 2010-31, Sec. 8.5 (SB 897, Sec. 8.5) directs the State Board of Community Colleges to permanently realign its funding formula for student services to ensure community colleges have adequate funds and resources to administer and provide financial aid services to students. The section directs all community colleges to participate in the William D. Ford Federal Direct Loan Program and requires counselors at community colleges to inform students about this Program.

The provision addressing the realignment of the funding formula became effective July 1, 2010. The provision addressing participation in the William D. Ford Federal Direct Loan Program becomes effective July 1, 2011. (DC)

Tuition Refunds

S.L. 2010-31, Sec. 8.6 (SB 897, Sec. 8.6) requires refunds of community college tuition must not be made except under the following circumstances, unless superseded by federal regulations:

- A 100% refund must be made if the student officially withdraws prior to the first day of class of the academic semester or term. A student also is eligible for a 100% refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.
- A 75% refund must be made if the student officially withdraws from the class prior to or on the official 10% point of the semester.
- For classes beginning at times other than the first week of a semester, a 100% refund must be made if the student officially withdraws from the class prior to the first class meeting. A 75% refund must be made if the student officially withdraws from the class prior to or on the 10% point of the class.
- A 100% refund must be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75% refund must be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.
- All tuition and fees may be refunded to the estate of a student who has paid the required tuition during a semester and dies during that semester prior to or on the last day of examinations.

Community colleges must adopt local refund policies for classes with receipts not required to be deposited into the State Treasury account.

This section became effective July 1, 2010. (KM)

Flexibility in Setting Salary/Community College President

S.L. 2010-113 (SB 740) prohibits the State Board of Community Colleges from setting any salary caps on the portion of the salary paid to a community college president from local funds. The employer contribution rate on the portion of the salary paid from local funds must be set by the State Treasurer based on actuarial recommendations.

This act became effective July 1, 2010. (SK)

Voluntary Shared Leave Nonfamily Sick Leave Donations

S.L. 2010-139 (HB 213). See **State Government**.

Universities

Driver Education

S.L. 2010-31, Sec. 7.12 (SB 897, Sec. 7.12). See **Public Schools** in this chapter.

Repeal Escheat Fund Appropriation for Millennium Teaching Scholarship Loan Program

S.L. 2010-31, Sec. 9.1 (SB 897, Sec. 9.1) repeals the requirement that Escheat Fund income must be used to fund the Millennium Teaching Scholarship Loan Program, which provides scholarship loans to North Carolina high school seniors pursuing teacher education training at a Historically Black College and University that does not offer the Teaching Fellows program. The Escheat Fund income is not necessary, because the Millennium Teaching Scholarship Loan Program currently has sufficient reserves to continue operating in the 2010-2011 fiscal year.

This section became effective July 1, 2010. (SK)

Review of The University of North Carolina Science, Technology, Engineering, and Mathematics Programs

S.L. 2010-31, Sec. 9.7 (SB 897, Sec. 9.7) requires The University of North Carolina General Administration (General Administration) to compile a comprehensive list of programs within The University of North Carolina whose primary objective is to provide community outreach in the form of either teacher professional development programs to strengthen the quality of science or mathematics instruction in the public schools, or K-12 student enrichment programs in the areas of science, technology, engineering, or mathematics (STEM), in order to assess the effectiveness of those programs. This list must be submitted to the Office of State Budget and Management and the Fiscal Research Division by February 15, 2011, and must include the following programs:

- Pre College and Teacher Professional Development programs administered through the North Carolina Mathematics and Science Education Network.
- Summer Ventures Program.
- North Carolina Central University Center for Science, Math and Technology Education.
- Fayetteville State University CHEER Summer Bridges.

General Administration also must conduct a review of the identified programs and report the results to the Office of State Budget and Management and the Fiscal Research Division by September 30, 2011, to assist with future funding decisions. The report must include the following information:

- A description of the program mission, goals, and objectives.
- The statutory objectives for the program.
- Annual State appropriation and receipt funding for the program.
- Program effectiveness measures for Teacher Professional Development programs, including measures of both the teachers' classroom effectiveness in STEM areas before and after attending a university professional development program and of

math and science educators retained as a result of attending a University of North Carolina professional development program.

- Program effectiveness measures for student enrichment programs, including measures before and after attending a STEM program of students' expected college and career aspirations and math and science performance on standardized tests, and measures of declared STEM majors within The University of North Carolina who attended a University of North Carolina sponsored STEM program.

The section also requires the Department of Public Instruction to survey math and science educators in North Carolina to identify the number of current educators who attended a Pre College or Summer Ventures program sponsored by The University of North Carolina. The data must be reported to the Office of State Budget and Management and the Fiscal Research Division by February 15, 2011.

This section became effective July 1, 2010. (KM)

The University of North Carolina Health Care System

S.L. 2010-31, Sec. 9.11 (SB 897, Sec. 9.11) changes the ex officio membership on the board of directors of The University of North Carolina Health Care System to include the Chancellor of the University of North Carolina at Chapel Hill and the faculty member responsible for leading clinical patient care programs at the School of Medicine. The Chancellor of the University of North Carolina at Chapel Hill may serve as the chairman of the board of directors.

This section became effective July 1, 2010. (SK)

University Cancer Research Fund

S.L. 2010-31, Sec. 9.12 (SB 897, Sec. 9.12) provides that the Chancellor of the University of North Carolina at Chapel Hill shall replace the President of The University of North Carolina as an ex officio member and the chair of the Cancer Research Fund Committee.

This section became effective July 1, 2010. (SK)

The University of North Carolina Management Flexibility Reduction

S.L. 2010-31, Sec. 9.13 (SB 897, Sec. 9.13) as amended by S.L. 2010-123, Sec. 3.4 (SB 1202, Sec. 3.4) provides that the constituent institutions may, with the approval of the President of The University of North Carolina, increase tuition by up to $750 per academic year and may implement the increase over the 2010-2011 and 2011-2012 academic years. This increase is in addition to other increases authorized for the 2010-2011 and 2011-2012 fiscal years. At least 20% of the funds must be used to provide need-based financial aid to students. The remaining balance of the funds: (i) must be used to offset the institutional management flexibility reductions, and (ii) also may be used to offset the additional one percent management flexibility reduction and to meet reversion requirements, if it is necessary to implement an additional one percent management flexibility reduction to backfill enhanced federal Medicaid Assistance Percentage funds.

This section became effective July 1, 2010. (DC)

Recruitment of Pharmacy Students

S.L. 2010-31, Sec. 9.15 (SB 897, Sec. 9.15) requires the University of North Carolina at Chapel Hill to collaborate with the University of North Carolina at Asheville and Elizabeth City

State University regarding recruitment of pharmacy students by developing and instituting a plan to inform potential students of the pharmacy programs at each of those institutions.

This section became effective July 1, 2010. (KM)

Transfer Surplus in Legislative Tuition Grants and State Grants to Students at Certain Private Institutions of Higher Education to Contractual Scholarship Fund

S.L. 2010-31, Sec. 9.19 (SB 897, Sec. 9.19) provides that if the amount appropriated to the State Education Assistance Authority (SEAA) for the 2010-2011 fiscal year for legislative tuition grants exceeds the amount required to pay the grants, in the amount of $1,850 to each North Carolina resident student attending the State's private colleges, then the SEAA must deposit the surplus balance of the funds into the State Contractual Scholarship Fund. The SEAA may use these funds to provide additional scholarships for, or to increase the scholarship amounts awarded to, students who have financial need.

The section further provides that if the amount appropriated to the SEAA for the 2010-2011 fiscal year for State grants awarded for students at certain eligible private institutions of higher education exceeds the amount required to pay the grants in the amount of $1,850 to each North Carolina resident student attending the certain eligible private institutions of higher education, then the SEAA must deposit the surplus balance of the funds into the State Contractual Scholarship Fund. The SEAA may use these funds to provide additional scholarships for, or to increase the scholarship amounts awarded to, students who have financial need.

This section became effective July 1, 2010. (DC)

Campus Initiated Tuition Increases/Twenty-Five Percent for Student Financial Aid

S.L. 2010-31, Sec. 9.20 (SB 897, Sec. 9.20) repeals a prior section prohibiting the Board of Governors of The University of North Carolina (BOG) from approving campus initiated tuition increases for North Carolina residents for the 2010-2011 academic year. The section provides instead that all campus initiated tuition increases approved by the BOG may be implemented, but each campus that implements tuition increases must expend at least 25% of the increase on need-based student financial aid, and may use as much of the remaining tuition income as needed to fully meet need-based student financial aid needs on that campus.

This section became effective July 1, 2010. (KM)

The University of North Carolina Enrollment Growth

S.L. 2010-31, Sec. 9.22 (SB 897, Sec. 9.22) directs the Board of Governors of The University of North Carolina to consider all of the following when considering any potential increases in enrollment growth for the 2011-2013 fiscal biennium:

- General economic conditions of the State as reported by the Office of State Budget and Management and the Fiscal Research Division.
- Possible increases and decreases in the State's revenues, particularly General Fund revenue as reported by the Office of State Budget and Management and the Fiscal Research Division.
- Any other non-State revenue sources available to The University of North Carolina that can be used to assist with the recurring costs of enrollment growth.

This section became effective July 1, 2010. (SK)

Eliminate In-State Tuition for Non-Resident Athletic Scholarships

S.L. 2010-31, Sec. 9.25 (SB 897, Sec. 9.25) eliminates the provision that allowed a Board of Trustees of a constituent institution of The University of North Carolina to consider as residents of North Carolina persons who receive full athletic scholarships to the constituent institution from entities recognized by the constituent institution. These persons can no longer be considered residents of North Carolina for all purposes by The University of North Carolina.

This section became effective July 1, 2010. (DC)

Transfer Tuition Assistance Program

S.L. 2010-31, Sec. 17.3 (SB 897, Sec. 17.3) transfers the North Carolina National Guard Tuition Assistance Program from the Department of Crime Control and Public Safety to the State Education Assistance Authority and makes technical statutory changes required by such a transfer.

This section became effective July 1, 2010. (DC)

University Energy Savings

S.L. 2010-196, Secs. 1 and 2 (HB 1292, Secs. 1 and 2) requires constituent institutions of The University of North Carolina to carry forward to the next fiscal year the General Fund current operations appropriations credit balance that remains at the end of each fiscal year for utilities that are energy savings realized from implementing an energy conservation measure. The use of the funds from those energy savings is limited to one-time capital and operating expenditures that do not impose additional financial obligations on the State, and constituent institutions must use 60% of these energy savings for further energy conservation measures. The Director of the Budget may not decrease the recommended continuation budget requirements for utilities for constituent institutions by the amount of the energy savings. Constituent institutions must include a report on the use of these funds in their management plan submitted annually to the State Energy Office.

Management plans for energy, water, and other utility use submitted annually by State institutions of higher learning must include the following:

- Estimates of all costs associated with implementing energy conservation measures, including pre-installation and post-installation costs.
- The cost of analyzing the projected energy savings.
- Design costs, engineering costs, pre-installation costs, post-installation costs, debt service, and any costs for converting to an alternative energy source.
- An analysis that identifies projected annual energy savings and estimated payback periods.

These sections became effective July 1, 2010, and apply to contracts entered into on or after that date. (KM)

Studies

Legislative Research Commission (LRC)

Changing Demographics in the State Community College and University Systems

S.L. 2010-152, Sec. 2.11 (SB 900, Sec. 2.11) authorizes the LRC to study issues relating to the changing demographics in the State's community college and university systems. The LRC may consider how the populations attending the State's community colleges and universities have changed over the last decade with regard to age, reasons for attendance, students enrolling who have prior educational experience, and students enrolling through college transfer programs from community colleges.

This section became effective July 22, 2010. (DA)

New/Independent Studies/Commissions

Establish Diversity in the Public Schools Commission

S.L. 2010-152, Part XXXIV (SB 900, Part XXXIV) creates the Legislative Commission on Diversity in the Public Schools (Commission) to study the effects of student diversity in public school enrollment. The Commission will consist of 15 members as follows:

(1) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.
(2) Five members of the Senate appointed by the President Pro Tempore of the Senate.
(3) Five public members appointed by the Governor.

As part of this study, the Commission must:

- Consider whether schools in which students of various racial, ethnic, and socioeconomic characteristics are balanced to improve the quality of the learning experience and the academic achievement of all students as compared to schools with more homogeneous student enrollments.
- Examine whether diverse public schools are successful in closing the achievement gap.
- Explore the level of parental involvement in schools with a diverse student population.
- Examine best practices for creating and maintaining student diversity in schools and school systems in other states.
- Consider whether diverse public schools improve student discipline.
- Consider the fiscal impact and efficiency of State funding streams given the data accumulated.
- Study any other issue the Commission considers relevant.

The Commission must report the results of its study and recommendations to the 2011 General Assembly. The Commission must terminate on March 1, 2011, or upon the filing of its final report, whichever occurs first.

This part became effective July 22, 2010. (DA)

Establish Regional School Planning Commission

S.L. 2010-183 (SB 1199) and S.L. 2010-152, Part XXIX (SB 900, Part XXIX) create the Agriscience and Biotechnology Regional School Planning Commission (Commission) to develop

and plan a regional school of agriscience and biotechnology. The Commission will include up to nine members appointed by the chair of the State Board of Education no later than September 1, 2010. The Commission, in developing its plan, must ensure the model is replicable, sustainable, and scalable, and must:

- Consider the school's governance, funding for operational and capital needs, personnel, admissions and assignment of students, transportation, school food services, and other relevant issues.
- Solicit proposals from interested regions seeking to host the school and identify the school's location.
- Identify potential business partners for the school.
- Consult with North Carolina State University and the North Carolina Research Campus and establish connections between those institutions and the school.

The Commission must report on its plan to the State Board of Education, the Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission, and the Joint Legislative Education Oversight Committee by January 1, 2011.

This act became effective August 3, 2010. (KM)

Referrals to Existing Commissions/Committees

National Board for Professional Teaching Standards Funds

S.L. 2010-31, Sec. 7.11(c) (SB 897, Sec. 7.11(c)) directs the Joint Legislative Education Oversight Committee to study a National Board Certification Program for Principals in conjunction with the pilot program being developed by the National Board for Professional Teaching Standards and report its recommendation to the 2011 General Assembly by March 1, 2011.

This section became effective July 1, 2010. (DC)

Joint Legislative Education Oversight Committee Studies

S.L. 2010-152, Part V (SB 900, Part V) authorizes the Joint Legislative Education Oversight Committee to study the following topics and report its findings, together with any recommended legislation, to the 2011 Regular Session of the General Assembly:

- Virtual School of Engineering.
- Graduation Disparity.
- Maximum Age for Enrollment in Public Schools.

This part became effective July 22, 2010. (DA)

Referrals to Departments, Agencies, Etc.

Cooperative and Innovative High Schools

S.L. 2010-31, Secs. 7.21(d) and (e) (SB 897, Secs. 7.21(d) and (e)) directs the Department of Public Instruction to study the fiscal impacts of the Cooperative and Innovative High School Act (Act) and report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by March 15, 2011, including historical data on the number of new schools created each fiscal year. After July 1, 2010, the State Board of Education must not approve any new schools under the Act unless the school has received an explicit appropriation from the General Assembly.

This section became effective July 1, 2010. (SK)

Study Financial Aid Consolidation

S.L. 2010-31, Sec. 9.2 (SB 897, Sec. 9.2) requires the State Education Assistance Authority, The University of North Carolina, the North Carolina Community College System, and the Fiscal Research Division of the General Assembly to establish a work group to study the simplification and consolidation of State-funded financial aid for students. The North Carolina Independent Colleges and Universities, Incorporated must be included as a joint member of the work group if it chooses to participate in the study. The work group must consider the State's current student financial aid programs and how to consolidate those programs into two categories of State-funded student aid programs: (i) major need-based programs, and (ii) scholarship and forgivable loan programs for students who plan to earn degrees for certain professional areas.

Specifically, the work group must:

- Design a unified need-based financial aid program that combines The University of North Carolina Need-Based Grant program, the North Carolina Community College Grant program, and the North Carolina Education Lottery Scholarship program. The work group must consider proportionality of funding and funding sources. The work group may consider whether "need" must be redefined for purposes of student financial aid and to develop a common formula for the distribution of financial aid.
- Design a "forgivable loans for service" program that combines the Nurse Educators of Tomorrow; Nurse Scholars Program; Nurse Education Scholarship Loan Program; Board of Governors Medical Scholarship Loans; Board of Governors Dental Scholarship Loans; Health, Science and Mathematics Student Loan Program; Prospective Teacher Scholarship Loan Program; and the Teacher Assistant Scholarship Program. The single consolidated program initially must focus on the teaching and health professions. The work group may consider the current allocation of funds among the various programs and whether service areas need to be changed for the forgivable loans.

The work group also must consider the following:

- The time period required to phase out student loans from any of the programs affected by consolidation.
- How federal funding may affect student financial aid services.
- How to deal with current recipients of funds from programs affected by the consolidation.
- How to deal with recipients who are paying back loans made through programs affected by the consolidation.
- Whether the State Education Assistance Authority should be allowed to extend the repayment period for forgivable loans in hardship circumstances and the procedure for making the determination.
- Whether there are significant abuses of the financial aid system and how to address them.
- Any other issues the work group deems relevant.

The work group must present its proposed program designs and report its findings and recommendations to the Joint Select Committee on State Funded Student Financial Aid by October 1, 2010. The report also may identify options that vary from the proposed program designs but may be workable and consistent with the legislative intent of the study.

This section became effective July 1, 2010. (DC)

Driver Education Program Funding Study

S.L. 2010-31, Sec. 28.2 (SB 897, Sec. 28.2) directs the Office of State Budget and Management (OSBM) to review the funding and efficacy of the Driver Education Program to

determine the appropriate source of funding for the program and the outcomes of funding on student driving. The study must examine the existing distribution, redistribution, and reversion used to distribute funds to the local school administrative units. The review must include recommendations to improve services, reduce costs or duplication of services, and alternative funding sources such as fees. OSBM must work with the Department of Public Instruction to establish the performance measures to determine program effectiveness. OSBM must make recommendations to the Governor and the General Assembly by November 1, 2010.

This section became effective July 1, 2010. (SK)

Study Issues Related to Sports Injuries at Middle School and High School Levels

S.L. 2010-152, Part XIII (SB 900, Part XIII) directs the State Board of Education (SBE) to study issues relating to sports injuries for all sports at the middle school and high school levels, focusing on the prevention and treatment of injuries. The SBE should consult with school administrators, representatives of the North Carolina High School Athletic Association, high school athletic directors, middle school coaches, athletic trainers, and doctors with expertise in the area of sports medicine. The SBE must report the results of its study and recommendations to the 2011 General Assembly.

This part became effective July 22, 2010. (DA)

Establish a Blue Ribbon Task Force to Study the Impacts of Raising the Compulsory Public School Attendance Age

S.L. 2010-152, Part XIV (SB 900, Part XIV) directs the State Board of Education (SBE) to establish a Blue Ribbon Task Force 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. In its study, the SBE must consider the following:

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

The SBE must report its findings and recommendations to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee by November 15, 2010.

This part became effective July 22, 2010. (DA)

Chapter 10
Environment and Natural Resources

Tim Dodge (TD), Jeff Hudson (JH), Mariah Matheson (MM),
Jennifer McGinnis (JLM), Jennifer Mundt (JM)

Enacted Legislation

Environmental Health

Exempt Traditional Country Stores from Certain Sanitation Requirements

S.L. 2010-180, Sec. 18 (HB 1766, Sec. 18) adds traditional country stores to those entities that are exempt from certain statutes governing the sanitation of food and lodging facilities. The section defines "traditional country store" to mean for-profit establishments that sell an assortment of goods, including prepackaged foods and beverages, and that have been in continuous operation for at least 75 years.

This section became effective August 2, 2010. (JM)

Fisheries

Improve Success of Fishery Management Plans

S.L. 2010-13 (HB 1713) provides that each Fishery Management Plan (FMP) must:

- Specify a time period, not to exceed two years from the date of the adoption of the FMP, for ending overfishing. This requirement applies only to fisheries not producing a sustainable harvest.
- Specify a time period, not to exceed ten years from the date of adoption of the FMP, for achieving a sustainable harvest. This requirement does not apply to fisheries where the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirement incompatible with professional standards for fisheries management.
- Include a standard of at least 50% probability of achieving sustainable harvest. This requirement does not apply to fisheries where the Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirement incompatible with professional standards for fisheries management.

This act became effective June 23, 2010. (JH)

Fishery Management Plan Supplements

S.L. 2010-15 (HB 1710) provides that if the Secretary of Environment and Natural Resources determines it is in the interest of the long-term viability of a fishery, the Secretary may authorize the Marine Fisheries Commission (MFC) to develop temporary management measures to supplement an existing Fishery Management Plan (FMP) without going through the full FMP development process. During the next review period for a FMP supplemented by temporary

management measures, the MFC either would incorporate the temporary management measures into the FMP or the temporary management measures would automatically expire.

This act became effective June 23, 2010. (JH)

Suspension and Revocation of Fishing Licenses

S.L. 2010-145 (HB 1714) directs the Marine Fisheries Commission (MFC) to adopt rules for the suspension, revocation, and reissuance of commercial and recreational coastal fishing licenses. Such rules may not become effective prior to October 1, 2012. In adopting the rules, the MFC will consider:

- The existing suspension, revocation, and reissuance statute.
- Whether the rules should differentiate between minor and major violations.
- How to define minor and major violations.
- How service of revocation could be more efficient.
- How the rules should treat violations related to recreational fishing licenses and permits.
- Whether violations related to littering or assault on a marine patrol inspector should be treated as grounds for suspension or revocation.
- Whether suspension and revocation provisions should be strengthened in cases of harvesting shellfish from polluted waters.

The act also makes conforming changes to the existing suspension, revocation, and reissuance statutes, G.S. 113-171.

Except for the conforming changes to G.S. 113-171, which become effective October 1, 2012, the act became effective July 22, 2010. (JH)

Miscellaneous

Consolidate Three Subunits of the Department of Environment and Natural Resources into a New Division of Environmental Assistance and Outreach

S.L. 2010-31, Sec. 13.1(a) (SB 897, Sec. 13.1(a)) consolidates the Customer Service Center, the Division of Pollution Prevention and Environmental Assistance, and the Small Business Ombudsman of the Department of Environment and Natural Resources into the new Division of Environmental Assistance and Outreach.

This section became effective July 1, 2010. (MM)

Authority for the Department of Revenue to Share Information with the Department of Environment and Natural Resources

S.L. 2010-31, Sec. 13.15 (SB 897, Sec. 13.15) authorizes the Department of Revenue to disclose to the Division of Forest Resources of the Department of Environment and Natural Resources pertinent contact and financial information concerning companies involved in the primary processing of timber products.

This section became effective July 1, 2010. (MM)

Environment and Natural Resources Reports Consolidation/ Technical Corrections 2010

S.L. 2010-142 (HB 1802) amends certain environmental and natural resource reporting requirements as follows:

- Repeals a reporting requirement made obsolete by a law enacted in 2009, which eliminated the requirement for each State department, institution, agency, community college, and local school administrative unit to report to the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources (DENR) the amounts and types of materials and supplies with recycled content that were purchased. As a result of this change, the Division of Waste Management of DENR will no longer include information from this report in the Annual Solid Waste Management Report.
- Requires DENR to submit the mercury switch removal program annual report to the Fiscal Research Division of the General Assembly, in addition to the Environmental Review Commission (ERC) and the Senate and House of Representatives Appropriations Subcommittees on Natural and Economic Resources.
- Requires DENR to submit the Ecosystem Enhancement Program annual report to the Joint Legislative Commission on Governmental Operations (Gov Ops), in addition to the ERC and the Fiscal Research Division.
- Specifies a reporting date of October 1 for the Special Zoo Fund annual report and adds reporting requirement from DENR to Gov Ops, in addition to the Office of State Budget and Management and the Fiscal Research Division.
- Specifies a reporting date of October 1 for the Advisory Commission for the North Carolina State Museum of Natural Sciences annual report and adds reporting requirement from the Advisory Commission to the Fiscal Research Division and Gov Ops, in addition to the General Assembly.
- Amends the reporting requirement for the Environmental Management Commission report on the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO_2) from annually to biennially, with the first report due on September 1, 2011.

In addition, this act makes technical corrections to a number of environmental and natural resource statutes.

This act became effective July 22, 2010. (MM)

Create Uwharrie Regional Resources Commission

S.L. 2010-176 (HB 972) establishes the Uwharrie Regional Resources Commission (Commission) to foster economic development and protect and enhance the natural resources of the Uwharrie Region (region), including Davidson, Davie, Montgomery, Rowan, Randolph, and Stanly counties.

The Commission is directed to:

- Identify and evaluate issues affecting important resources of the region and recommend policies and programs to address those issues.
- Coordinate with existing local and regional efforts to address threats to important regional resources and work undertaken by councils of government and the jurisdictions they serve in the region.
- Provide a forum for discussion of issues affecting important regional resources.
- Promote communication, coordination, and education among stakeholders within the region.
- Collect research and information from North Carolina and other states and jurisdictions regarding state and regional approaches to coordinating (i) provision of

infrastructure for the protection of important regional resources and (ii) efforts to encourage quality growth to protect such important regional resources.
- Determine new strategies or tools helpful to address pressures on important regional resources, and whether and how such strategies or tools should be implemented to protect and enhance such resources to maximize their value for the benefit of the citizens of the Uwharrie region, as well as the State.
- Provide guidance and make recommendations to local, State, and federal legislative and administrative bodies and to others as it considers necessary and appropriate for the use, stewardship, and enhancement of important regional resources.

The Commission has the following powers, among others:
- To develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives.
- To pursue efforts directed at the equitable distribution of water for public purposes.
- To seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The Commission may accept or expend funds only after an affirmative vote by a majority of the members of the Commission.
- To exercise the powers of a body corporate, including the power to sue and be sued, own or lease property, and adopt and use a common seal and alter the same.
- To enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the Commission.
- To perform any lawful acts necessary or appropriate to achieve the purposes of the Commission.

This act became effective August 2, 2010. (JLM)

Amend Environmental Laws 2010

S.L. 2010-180 (HB 1766) amends certain environmental and natural resources laws as follows:
- Changes the location of the horizontal control monument files for plat and subdivision mapping requirements from the North Carolina Office of State Budget and Management to the North Carolina Geodetic Survey Section of the Division of Land Resources of the Department of Environment and Natural Resources (DENR).
- Provides that the President Pro Tempore of the Senate and the Speaker of the House of Representatives may designate multiple members to serve as Co-chairs of the Environmental Review Commission (ERC). The statute formerly provided for designation of one member per chamber.
- With regard to remedial action plans for inactive hazardous substance or waste disposal sites: (i) repeals the requirement that a plan be recorded in the register of deeds office in the county or counties in which the site is located; and (ii) modifies the requirement that a plan be placed in each library in the county or counties in which the site is located and instead requires the plan to be placed only in the library in the county that is in closest proximity to the site.
- Reestablishes the Surface Water Identification and Training Certification Program under the Riparian Buffer Protection Program. The program expired in 2004. However, the Division of Water Quality (DWQ) in DENR continued to offer the training. Beginning October 1, 2011, DWQ must report annually to the ERC on the effectiveness of the program and any findings and recommendations.
- Amends a reporting requirement applicable to owners or operators of permitted wastewater collection or treatment works to provide for an annual report to users or customers of those permitted systems that have an average annual flow of greater than 200,000 gallons per day.
- Amends the maximum civil penalty that may be assessed by local air programs for air quality violations, from $10,000 per day to $25,000 per day, to conform to similar

changes enacted during the 2007 Session in enforcement and civil procedures for air quality violations. This provision becomes effective October 1, 2010, and applies to violations that occur on or after that date.

- Changes the name of the North Carolina National Park, Parkway and Forests Development Council to the Western North Carolina Public Lands Council, and amends the composition of the Council.
- Clarifies the standards for qualification of voluntary water conservation and water use efficiency programs established by trade or professional organizations representing commercial car washes, by providing that implementation of voluntary programs be considered in determining compliance with a local government water shortage response plan, to the extent that program achieves year-round reductions in water use and results in a reduction of 20% or more in average water use per vehicle.
- Clarifies the procedures DENR must follow to enforce the provisions of the Drought Management Preparedness and Response Act enacted in 2008. This provision becomes effective October 1, 2010, and applies to penalties assessed on or after that date.
- Amends the membership of the Sedimentation Control Commission to allow a representative of a North Carolina public utility company to serve as a member of the Commission.
- Provides the existing prohibition on any new or increased nutrient loading allocation applies only to impaired drinking water supply reservoirs.
- Authorizes the ERC to study the for prohibited disposal of certain items in landfills, and report the findings and any legislative recommendations to the 2011 Regular Session of the 2011 General Assembly upon its convening.
- Clarifies the statutory provision mandating local government water systems and large community water systems to require separate meters for new in-ground irrigation systems connected to their systems applies only to lots platted and recorded after July 1, 2009, in the office of the register of deeds in the county or counties in which the real property is located.
- Delays the sunset date for current nutrient offset payments from September 1, 2010, to September 1, 2011, to provide additional time for rulemaking to develop and adopt a new payment schedule.

This act became effective August 1, 2010, unless otherwise specified. (JM)

Application of State Environmental Policy Act (SEPA) to Incentives/ Clarify Effective Date for SEPA Exemption

S.L. 2010-186 (SB 778), as amended by S.L. 2010-188 (HB 1099), exempts certain projects from requirements of the State Environmental Policy Act (SEPA) concerning preparation of an environmental document. The exemption applies to projects for which public monies are expended, if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.

The act, as amended, became effective June 1, 2010, and does not apply to any project that was the subject of pending litigation or orders issued by a court of competent jurisdiction prior to that date concerning the application of SEPA to projects receiving economic incentives. (JLM)

Cleanfields Act of 2010

S.L. 2010-195 (SB 886) authorizes the establishment of a cleanfields renewable energy demonstration park (Park) in the State on a tract or parcel of land that meets the following criteria:

- The Park must be at least 250 contiguous acres.
- All of the real property comprising the Park is contiguous to a body of water.
- The property within the Park is or may be subject to remediation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), except the site cannot be listed on the National Priorities List.
- The Park contains a manufacturing facility that is idle, underutilized, or curtailed and at one time employed at least 250 people.
- The owners of the Park plan to attract at least 250 new jobs to the site.
- The owners of the Park have entered into a brownfields agreement with the Department of Environment and Natural Resources and have provided satisfactory financial assurance for the brownfields agreement.
- The creation of the Park is for the purpose of featuring clean energy facilities, laboratories, and companies, in order to promote economic growth.
- The development plan for the Park must include at least three renewable energy or alternative fuel facilities.
- The development plan for the Park must include a biomass renewable energy facility that utilizes refuse-derived fuel, including yard waste, wood waste, and waste generated from construction and demolition, but not including wood directly derived from whole trees, as the primary source for generating energy. The refuse-derived fuel also must undergo an enhanced recycling process before being utilized by the facility.
- The owners of the Park certify that the initial biomass renewable energy facility will not be a major source of air quality pollutants, as that term is currently defined in federal regulations, and the facility will remain in compliance with all applicable State and federal emissions requirements throughout its operating life.

Any electric power or renewable energy certificates generated at an eligible biomass renewable energy facility that are purchased by an electric power supplier will be given triple credit for the purposes of compliance with specific provisions of the State's renewable energy portfolio standard. The triple credit applies only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State.

This act became effective August 5, 2010. (TD)

Solid/Hazardous Waste

Strengthen Plastic Bag Recycling

S.L. 2010-31, Sec. 13.10 (SB 897, Sec. 13.10) amends provisions enacted in 2009 that prohibited retailers in portions of Dare, Currituck, and Hyde Counties from providing customers with plastic bags in certain circumstances. This section makes the following changes to the law:

- Modifies the definitions of "recycled content" and "reusable bag."
- Alters a provision that permits substitution of recycled paper bags if a retailer offers an incentive to a customer who uses the customer's own reusable bags instead of bags provided by the retailer. The act deletes the option for retailers to offer store coupons or value or rewards associated with a retailer's loyalty or rewards programs as allowable incentives. Thus, a retailer now may substitute recycled paper bags only if the retailer offers customers a cash refund equal to or greater than the cost to

the retailer of providing a recycled paper bag, multiplied by the number of reusable bags filled with the goods purchased by the customer.

- Eliminates an exemption for retailers that have 5,000 or less square feet of retail or wholesale space. Such retailers are authorized, however, to provide customers with plastic bags that the retailer purchased or contracted for before May 1, 2010. This provision expires May 1, 2011.

This section also directs the Department of Environment and Natural Resources (DENR) to monitor plastic bag use reduction and report to the Environmental Review Commission (ERC) the impact the ban has made on plastic bag litter in coastal waterways adjacent to the areas to which the act applies. This provision became effective July 1, 2010.

This section becomes effective October 1, 2010, except as otherwise noted. (JLM)

Amend Electronics Recycling Law

S.L. 2010-67 (SB 887) repeals provisions governing the management and recycling of discarded computer equipment and discarded televisions, and creates a new Part that changes requirements applicable to the management of discarded computer equipment; the requirements applicable to television manufacturers and retailers were largely left unchanged.

The act requires computer equipment manufacturers to register with the Department of Environment and Natural Resources (DENR) by August 1, 2010, and within 90 days thereafter submit a plan for reuse or recycling of computer equipment. A manufacturer is required to implement one of three plans to collect and recycle computer equipment discarded by consumers and pay an initial and annual fee in an amount based on the plan selected. A Level I recycling plan fundamentally requires a manufacturer to take responsibility for discarded computer equipment that it manufactured. The plan must provide for environmentally-sound management practices to transport and recycle computer equipment collected by the manufacturer. Level II and III plans require a manufacturer to take responsibility for discarded computer equipment manufactured by other companies, as well as equipment that it manufactured; maintain physical collection sites to receive discarded computer equipment from consumers (10 sites for Level II plans, 50 sites for Level III plans); and host at least two collection events annually within the State. The act defines consumer as an occupant of a single detached dwelling unit or a single unit contained within a multiple dwelling unit who used a covered device primarily for personal or home business use, or a nonprofit organization with fewer than ten employees that used a covered device in its operations.

The act also:

- Requires television manufacturers to: (i) register with DENR; (ii) pay an initial and annual fee; (iii) annually recycle the manufacturer's market share allocation of televisions; and (iv) document due diligence assessments of recyclers with which the manufacturer contracts, including an assessment of compliance with environmentally-sound recovery standards adopted by DENR.
- Provides manufacturers, collectors, recyclers and retailers are not liable in any way for data and information left on equipment collected pursuant to the act.
- Prohibits the sale of new computer equipment and televisions by a manufacturer, or delivery to a retailer for sale, unless the computer equipment and televisions are properly labeled and the manufacturer is in compliance with the applicable provisions of the act. This provision becomes effective July 1, 2011.
- Directs fees collected from computer equipment and television manufacturers be credited to the Electronics Management Account. DENR is authorized to use a portion of the fee proceeds for administration of the requirements of the legislation, and to distribute the remaining funds annually to eligible local governments for local programs that manage discarded computer equipment, televisions, and other electronic devices.

- Prohibits the disposal of discarded computer equipment and televisions in landfills or by incineration effective July 1, 2011.
- Requires annual reports to DENR from both computer equipment and television manufacturers on collection and recycling activities. DENR is required to report information on collection and recycling activities to the Environmental Review Commission (ERC). This provision became effective July 8, 2010.

This act became effective August 1, 2010, except as otherwise specified. (JLM)

Underground Storage Tank Operator Training Program

S.L. 2010-154 (SB 1337) establishes training requirements for operators of regulated underground storage tank (UST) systems in order to comply with provisions of the federal Energy Policy Act of 2005. Specifically, the act requires all of the following:

- Primary and emergency response operators must be designated for each UST.
- The Department of Environment and Natural Resources must design and implement a training program for primary and emergency response operators on a number of matters associated with UST systems as specified in the act.
- Current operators must be trained by August 8, 2012.

The act also deletes the 10% deductible previously applicable to cleanups from the Noncommercial UST Trust Fund and makes conforming changes to provide that eligibility for repayment under the Noncommercial UST Trust Fund is transferable from the current landowner to subsequent landowners without any requirement that the deductible requirements first be met.

This act became effective July 22, 2010. (JLM)

Recycle Products Containing Mercury

S.L. 2010-180, Sec. 14 (HB 1766, Sec. 14) requires all public agencies to recycle spent fluorescent lights and mercury thermostats, requires the removal of fluorescent lights and mercury thermostats from buildings prior to demolition, and bans mercury-containing products from unlined landfills as follows:

- Public agencies (State agencies, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions) that use State funds for the construction or operation of public buildings must: (i) By July 1, 2011, implement a program for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury; and (ii) report on the agency's compliance with this requirement to the Department of Environment and Natural Resources and the Department of Administration on or before December 1, 2011. Both departments must compile the information submitted from all agencies and jointly submit a report to the Environmental Review Commission on or before January 15, 2012.
- Contractors responsible for building demolition or owners of property to be demolished must remove all fluorescent lights and thermostats that contain mercury from the building prior to demolition.
- Disposal of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris and other unlined landfills is prohibited. A knowing violation of this provision is a Class 3 misdemeanor and the violator is subject to the imposition of administrative penalties.

This section becomes effective July 1, 2011. (JLM, JM)

Prohibit Use of High Content Arsenic Glass Beads in Paint for Pavement Marking

S.L. 2010-180, Sec. 17 (HB 1766, Sec. 17) prohibits the use of high content arsenic glass beads in paint used for pavement marking. "High content" means more than 75 parts per million inorganic arsenic, as determined by established methods of the United States Environmental Protection Agency.

This section becomes effective October 1, 2010, and applies to any contracts for road projects entered into, or any pavement re-marking that takes place, on or after that date. (JM)

Water Quality/Quantity/Groundwater

Amend On-Site Wastewater Certification

S.L. 2010-31, Secs. 13.2(e)-13.2(o) (SB 897, Secs. 13.2(e)-13.2.(o)). See **Occupational Boards and Licensing**.

Improve River Basin Modeling

S.L. 2010-143 (HB 1743) directs the Department of Environment and Natural Resources (DENR) to develop basinwide hydrologic models for each of the State's 17 major river basins. DENR must establish a schedule for developing the models and give priority to those basins most likely to suffer water supply shortages or threats to ecological integrity or for which an existing hydrologic model has not been developed.

Each model will be designed to simulate water flows in response to different variables, conditions, and scenarios. Each model must be designed specifically to predict the places, times, frequencies, and intervals at which any of the following might occur:

- Yield may be inadequate to meet all needs.
- Yield may be inadequate to meet all essential water uses.
- Ecological flow may be adversely affected.

With the assistance of a Science Advisory Board, DENR must characterize the natural ecology of the river basins and identify the flows necessary to maintain ecological integrity. DENR must submit completed models to the Environmental Management Commission (EMC) for adoption by the EMC following a public comment period. DENR may not develop a model for a river basin for which a model has already been developed if DENR determines that the model meets the requirements set out in the act.

The act also provides the development of models would not vary any existing or impose any additional regulatory requirements.

This act became effective July 22, 2010. (JH)

Water Supply System Capacity Planning

S.L. 2010-150 (HB 1747) directs a local government that provides public water service or a large community water system to revise its local water supply plan to address foreseeable future water needs when 80% of the water system's available water supply (based on calendar year average daily demand) has been allocated or when seasonal demand exceeds 90%. Local governments must normally develop and submit a local water supply plan to the Department of Environment and Natural Resources at least once every five years.

This act became effective July 22, 2010. (TD)

Modify Water Funding Priorities

S.L. 2010-151 (HB 1744) modifies the common criteria applicable to State-funded loans and grants for water and wastewater infrastructure projects as follows:

- *Leaking waterlines*. The act clarifies the repair or replacement of leaking waterlines is a priority in situations where the line repair or replacement is being done either to improve water conservation and efficiency or to prevent contamination.
- *Asset management plans*. The act provides a project submitted by a local government unit with more than 1,000 service connections that has developed and is implementing an asset management plan has priority over a project submitted by a local government unit with more than 1,000 service connections that has not developed or is not implementing an asset management plan.
- *High-unit-cost threshold*. The act establishes a high-unit-cost project has priority over non-high-unit-cost projects. In addition, the act establishes a sliding scale system for determining the priority given to projects that exceed the high-unit-cost threshold.
- *Regionalization*. The act gives priority to projects that promote the consolidation, management, merger, or interconnection of water systems. If an applicant demonstrates it is not feasible for the project to include regionalization, the funding agency must assign the project the same priority as a project that includes regionalization.
- *State water supply plan*. The act directs each local government unit in the State to develop and submit a local water supply plan to DENR at least once every five years. DENR then must use the information contained in the local water supply plans to create a State water supply plan. DENR is directed to identify potential conflicts among the various local plans and ways in which local water supply programs could be better coordinated. The act gives priority to a project that addresses a potential conflict between local plans or implements a measure in which local water supply plans may be better coordinated.
- *Water conservation measures for drought*. The act requires local government units to adopt certain minimum water conservation measures to respond to drought or other water shortage conditions, but allows local governments to adopt more stringent standards. The act gives priority to those projects that adopt more stringent water conservation measures.

This act became effective July 1, 2010, and applies to applications for loans and grants submitted on or after that date. (TD)

Amend Water Quality/Interbasin Transfer Laws

S.L. 2010-155 (HB 1765) makes the following changes to water quality and interbasin transfer laws:

- Authorizes local governments to jointly implement water quality protection plans for the Falls Lake watershed.
- Provides the applicant for the interbasin certificate must pay the notice and public hearing costs associated with necessary environmental documents and the draft determination on whether the certificate should be issued.
- Extends the sunset on the exception to the more stringent interbasin certification process established in 2007 for the Central Coastal Plain Capacity Use Area to January 1, 2013, and provides a similar exception for the New River Basin, the Shallotte River Basin, the Albemarle Sound River Basin, and the White Oak River Basin, to expire July 1, 2020.

- Authorizes the Environmental Review Commission to study interbasin transfers, including whether certificates for interbasin transfers should contain conditions that require a receiving river basin to first withdraw and transfer water from within its major river basin before it may withdraw water from another river basin.
- Provides the beneficial reuse of wastewater includes certain facilities that require relocation of a discharge from one receiving stream to another under all of the following conditions:
  - The relocation is necessary to create an approved comprehensive wastewater reuse program.
  - The reuse program provides significant reuse benefits.
  - The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

The act became effective July 22, 2010. The provision related to the costs associated with public hearings on interbasin transfers applies to public hearings held on or after that date. (JH)

Delay Boylston Creek Reclassification/Public Meetings

S.L. 2010-157 (SB 1259) delays the effective date of the Boylston Creek Reclassification Rule to July 1, 2011, and requires the Department of Environment and Natural Resources to hold at least two public meetings on the Rule in the Boylston Creek area.

The act became effective July 22, 2010. (JH)

Oil Spill Liability, Response, and Preparedness

S.L. 2010-179 (SB 836) makes the following changes to the laws governing oil spill liability, response, and preparedness:

- Clarifies the limits on recovery by the State under the statutes that govern the discharge of oil and other hazardous substances do not apply to offshore oil spills.
- Amends the definition of "exploration," as it pertains to offshore oil and gas activities, to include other techniques employed to assess and evaluate the presence of subterranean oil and natural gas deposits beyond undersea boring, drilling, and soil sampling.
- Clarifies the term "offshore waters" encompasses state and federal waters off the Atlantic coast, including the Gulf of Mexico.
- Clarifies strict liability may apply regardless of the location of the source of the discharge.
- Clarifies damages include damages caused by cleanup techniques or methods such as chemical dispersants.
- Clarifies the defense to liability for any damages that result from a discharge authorized by a State or federal permit applies only when the discharge is in compliance with the permit.
- Provides a responsible person is liable to an injured party for damages to the extent those damages could have been reasonably mitigated.
- Provides for review of information pertaining to an offshore fossil fuel facility located in coastal fishing waters necessary to determine consistency with State guidelines for public and private use of land and water areas within the coastal area. An "offshore fossil fuel facility" is a facility which, because of its size, magnitude, or scope of

impacts, has the potential to affect any land or water use or natural resource of the coastal area. Offshore fossil fuel facility includes:

- Any equipment, including pipelines and vessels that are used to carry, transport, or transfer oil, natural gas, liquid natural gas, liquid propane gas, or synthetic gas.
- Structures, including drill ships and floating platforms and structures relocated from other states or countries, located in coastal fishing waters for the purposes of exploration for, or development or production of, oil or natural gas.
- Onshore support or staging facilities related to exploration for, or development or production of, oil or natural gas.

➢ Provides the following information is required for the review of an offshore fossil fuel facility:

- All information required to be included in an Exploration Plan required pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).
- All information required to be included in an Oil-Spill Response Plan required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).
- Assessment of alternatives to the proposed facility that would minimize the likelihood of an unauthorized discharge.
- An assessment of the potential for the discharge to cause temporary or permanent violations of State and federal water quality standards.
- Any other information that the Coastal Resources Commission (CRC) determines necessary for consistency review.

➢ Directs the CRC to review existing laws and regulations that pertain to offshore energy exploration and production in light of the explosion, sinking, and subsequent oil releases from the Deepwater Horizon and make recommendations, if any, to the Environmental Review Commission on or before April 1, 2011.

➢ Directs the Department of Crime Control and Public Safety to immediately review the potential impacts of oil leaking from the Deepwater Horizon on the North Carolina Coast and update the State's Oil Spill Contingency Plan accordingly to ensure the State's preparedness in the event the oil leaking from the Deepwater Horizon makes it to North Carolina's coast or waters.

➢ Directs the Department of Environment and Natural Resources to review and make recommendations on current liability caps related to the discharge of oil and other hazardous substances.

This act became effective August 2, 2010. The liability provisions apply to any damages incurred on or after that date. (JH, JM)

Delay Effective Date of the Clean Coastal Water and Vessel Act

S.L. 2010-180, Sec. 21 (HB 1766, Sec. 21) limits the application of the Clean Coastal Water and Vessel Act (Act) only to those areas with final designations as no discharge zones (NDZs) by the United States Environmental Protection Agency (USEPA). As enacted in 2009, the Act also applied to vessels in coastal waters that are included in a petition to the USEPA to be designated as a NDZ; however, applicability to these areas under petition without a final designation was discovered to be potentially preempted by federal law. This section delays the effective date of the Clean Coastal Water and Vessel Act from July 1, 2010, to April 1, 2011.

This section became effective August 2, 2010. (JLM, JM)

Zoning and Development

Sustainable Communities Task Force/Amendments

S.L. 2010-31, Secs. 13.5(a)-13.5(e) (SB 897, Secs. 13.5(a)-13.5(e)), as amended by S.L. 2010-180, Sec. 21.2 (HB 1766, Sec. 21.2), establishes the North Carolina Sustainable Communities Task Force (Task Force), an interagency collaboration among the Departments of Commerce, Environment and Natural Resources, Transportation, Administration, Health and Human Services, and the North Carolina Housing Finance Agency focused on developing and sustaining healthy, safe, and walkable communities accessible to all North Carolinians.

The Task Force is housed within the Department of Environment and Natural Resources (DENR) and supports the State's sustainable communities initiatives. The 13-member Task Force must:

- Apply for, receive, and distribute on behalf of the State, funding from federal, public and private initiatives, grant programs, or donors that will foster sustainable development in North Carolina.
- Promote regional partnerships and assist local governments and regional or interlocal organizations in seeking and managing funding related to planning, development, or redevelopment of the State's communities in a sustainable manner.
- Identify federal funding opportunities related to sustainable development.
- Provide technical assistance to eligible entities in applying for federal and other funding opportunities that includes the development of scenario planning tools, progress measurement metrics, and public participation strategies for use by all applicants.
- Recommend policies for the support, promotion, and encouragement of sustainable communities to various State agencies, the General Assembly, and the Governor.
- Recommend annually to the Governor and the General Assembly appropriations for sustainable development programs.
- Develop a common local government sustainable practices scoring system incorporating sustainability principles.
- Pursue opportunities to: Combine the efforts of State agencies related to development and infrastructure; study how existing regional and interlocal organizations could improve their organization and reduce unnecessary overlap and duplication of services; and better integrate State efforts and investments with regional and local efforts.
- Consider the resources and infrastructure in small communities and rural areas to ensure all communities and areas may compete for grants on an equal basis when developing the common local government sustainable practices scoring system.

This section also establishes the North Carolina Sustainable Communities Grant Fund (Fund) in DENR to be administered by the Task Force. Money in the Fund must be used to provide funding to regional bodies, cities, or counties to improve regional planning efforts that integrate housing and transportation decisions, increase the capacity to improve land use and zoning, and provide up to 50% of any required local matching funds for recipients of Federal Sustainable Communities Planning Grants or any other federal grants related to sustainable development that require local matching funds. Regional entities must meet certain requirements to qualify for funds. In awarding any grant funding, the Task Force must use the common local government sustainable practices scoring system. The task force is directed to report to the House Commerce, Small Business, and Entrepreneurship Committee and the Senate Commerce Committee regarding the sustainable practices scoring system. The Task Force has no authority to regulate or supersede any action of any State agency or local government.

This section became effective July 1, 2010, and was amended effective August 2, 2010.

Permit Extensions

S.L. 2010-177 (HB 683) amends laws enacted in 2009 that pertain to development approval extensions as follows:

- Extends the suspension of the running of the period for a development approval for an additional year, from December 31, 2010, to December 31, 2011.
- Local governments may opt out of the permit extension program by adopting a resolution to keep December 31, 2010, as the end date for suspension of the running period.
- Provides that the suspension of the running of the period of the development approvals does not (i) modify any person's obligations or impair the rights of any party under contract, including bond or similar undertaking or (ii) authorize the charging of a water or wastewater tap fee that specifically has been paid in full for a project subject to a development approval.
- Establishes certain conditions that a holder of a development approval must meet in order for the extension to apply, including compliance with all applicable laws, maintenance of performance guarantees, and completing any infrastructure necessary to obtain a certificate of occupancy or other final permit approval.
- Authorizes local governments to terminate a development approval extension if the holder fails to comply with the conditions, but allows for appeal to the Board of Adjustment of any termination of an extension.

This act became effective August 2, 2010. (JM, TD)

Amend Notice Requirements when Increasing Certain Fees or Charges

S.L. 2010-180, Sec. 11 (HB 1766, Sec. 11) amends the notice requirements for cities, counties, sanitary districts, and water and sewer authorities when those entities consider imposing or increasing fees or charges related to subdivision development. This section requires the entities to provide notice to interested parties of the imposition or increase in fees, at least seven days prior to the first meeting where the fee is on the agenda for consideration using two of the following means of communication:

- Notice in a prominent location on a Web site managed or maintained by the entity. Cities, sanitary districts, and water and sewer authorities that do not manage or maintain a Web site may submit a request to the county or counties in which they are located to post the notice electronically on their behalf.
- Notice in a prominent physical location.
- Notice by electronic mail to a list of interested parties.
- Notice by facsimile to a list of interested parties.

This section becomes effective February 1, 2011. (JM)

Studies

New/Independent Studies/Commissions

Coastal Wave Energy Research and Prototype Project/Amend Scope of Project

S.L. 2010-31, Sec. 9.10(a) and 9.10(b) (SB 897, Sec. 9.10(a) and 9.10(b)), as amended by S.L. 2010-180, Sec. 21.1 (HB 1766, Sec. 21.1), requires the North Carolina Coastal Studies

Institute, serving as the lead agency, to form a consortium with the Colleges of Engineering at North Carolina State University, North Carolina Agricultural and Technical State University, and the University of North Carolina at Charlotte to study the capture of energy from ocean waves. The $2 million in appropriated funds must be used by university scientists to conceptualize, design, construct, operate, and market new and innovative technologies designed to harness and maximize the energy of the ocean in order to provide substantial power generation for the State. Technologies developed and used in this research may be attached to or staged from an existing State-owned structure located in the ocean waters of the State, and data generated by these technologies must be made available at the structure for public education and awareness.

Facilities authorized in this section must be constructed in accordance with provisions of general law applicable to the construction of State facilities, except that the State Property Office must expedite and grant all easements and use agreements required for construction of the facilities without payment of any fee, royalty, or other cost. Construction of these facilities is exempt from certain environmental statutes and rules and the Department of Environment and Natural Resources must expedite any other required environmental permit, waive application fees, and, where possible under applicable law, issue all permits within 40 days of receipt of a complete application.

As amended, this section provides for an interdisciplinary study of wave and physical processes in the oceans and associated water bodies that considers ecosystem functions and health of the ocean, including carbon budget, acidification, mercury, and nutrient issues, as a part of the coastal wave energy project authorized above.

This section became effective July 1, 2010, and was amended effective August 2, 2010. (JM)

Referrals to Existing Commissions/Committees

Electronics Recycling

S.L. 2010-67, Sec. 7 (SB 887, Sec. 7) directs the Environmental Review Commission (ERC) to study the feasibility of requiring recycling of (i) electronic equipment other than certain televisions or computer equipment, and (ii) computer equipment discarded by small businesses, and report its findings and recommendations, including any legislative proposals, to the 2011 Regular Session of the General Assembly upon its convening. The ERC also is tasked with monitoring and reviewing electronic recycling programs in other states on an ongoing basis and reporting its findings and recommendations to the General Assembly periodically.

The section became effective July 8, 2010. (JLM)

Impact of Environmental Toxins on Human Health

S.L. 2010-152, Sec. 6.2 (SB 900, Sec. 6.2) authorizes the Environmental Review Commission (ERC) to study the impact of environmental toxins on human health and report its findings and recommendations, including any proposals for legislation or administrative action, to the General Assembly no later than the convening of the 2012 Session of the 2011 General Assembly. The findings and recommendations may include all of the following:

- A survey of legislation in other states that bans toxins and chemicals, along with an assessment of the effectiveness of the legislation.
- A survey of how other states have set up entities within state government to review and regulate toxins and chemicals that have, or will be, introduced into the stream of commerce.
- A review of incentives proposed or enacted in other states to promote the growth of the green chemistry sector, including a special analysis of documented

environmental, public health, and economic benefits, including job creation, within the states.
- Identification of current State and federal programs for the review and regulation of environmental toxins and chemicals and recommendations for any supplementary programs the ERC determines to be necessary for the protection of human health.
- A cost-benefit and economic impact analysis for any recommendation made pursuant to this section.

This section became effective July 22, 2010. (JM, MM)

Water Cost Share

S.L. 2010-152, Sec. 6.3 (SB 900, Sec. 6.3) authorizes the Environmental Review Commission (ERC) to study the costs and benefits of improving water quality in reservoirs, rivers, and other water resources shared by local governments. In its study, the ERC may consider the water quality issues for local governments located both upstream and downstream from water resources, the wastewater treatment standards local governments both upstream and downstream must meet, the cost of complying with water quality and wastewater treatment standards, and the benefits received by local governments by complying with those standards. The ERC also may consider possible alternatives to current rate structures, treatment programs, and technology used by the State and local governments with regard to water quality and wastewater treatment, in addition to any other issue the ERC deems relevant to this study.

This section became effective July 22, 2010. (MM)

Oil and Gas Exploration in the Triassic Basin

S.L. 2010-152, Sec. 6.4 (SB 900, Sec. 6.4) authorizes the Environmental Review Commission to study the issue of oil and gas exploration in the Triassic Basin.

This section became effective July 22, 2010. (MM)

Issues Related to the Use and Storage of Reclaimed Water

S.L. 2010-152, Sec. 6.5 (SB 900, Sec. 6.5) authorizes 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 examine the following issues:

- 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 stored safely in and recovered from aquifers.
- Any other matters that the ERC deems appropriate in the conduct of this study.

This section became effective July 22, 2010. (MM)

Gas Leases in the Central Shale Belt

S.L. 2010-152, Sec. 6.7 (SB 900, Sec. 6.7) authorizes the Environmental Review Commission to study the issue of gas leases in the central shale belt, located in the Chatham and Moore County area.

This section became effective July 22, 2010. (MM)

Carbon Sequestration Potential of Natural and Working Landscapes and Other Carbon Offset Opportunities

S.L. 2010-152, Sec. 6.8 (SB 900, Sec. 6.8) authorizes the Environmental Review Commission to study the carbon sequestration potential of natural and working landscapes in the State and the feasibility and advisability of establishing a carbon offset program.

This section became effective July 22, 2010. (MM)

Extend the North Carolina Zoological Park Funding and Organization Study Committee

S.L. 2010-152, Sec. 21 (SB 900, Sec. 21) extends the term of the North Carolina Zoological Park Funding Organization Study Committee from May 1, 2010, to December 31, 2010. The Committee must report its findings and recommendations to the 2011 Regular Session of the 2011 General Assembly and to the Environmental Review Commission, at which time the Committee will terminate.

This section became effective July 22, 2010. (JLM, MM)

Legislative Study Commission on Urban Growth and Infrastructure Issues Report Date

S.L. 2010-152, Sec. 22 (SB 900, Sec. 22) establishes a reporting date for the Legislative Study Commission on Urban Growth and Infrastructure. The Commission must submit its final report on or before the convening of the 2011 General Assembly. The Commission will expire upon delivery of the final report or the convening of the 2011 General Assembly, whichever occurs first.

This section became effective July 22, 2010. (JM)

Transfer of Surface Water from One River Basin to Another

S.L. 2010-155, Sec. 5 (HB 1765, Sec. 5) authorizes the Environmental Review Commission (ERC) to study the transfer of surface water from one river basin to another. If the ERC undertakes this study, the ERC must consider whether certificates for interbasin transfers should contain conditions that require a receiving river basin first to withdraw and transfer surface water from within its major river basin before it may withdraw and transfer surface water from another river basin. The ERC must report the results and recommendations of this study, if any, to the 2011 General Assembly.

This section became effective July 22, 2010. (JH, MM)

Penalties Applicable to Violations of Landfill Bans

S.L. 2010-180, Sec. 15 (HB 1766, Sec. 15) authorizes the Environmental Review Commission to study penalties applicable to the laws that prohibit disposal of certain items in landfills, and report findings and any legislative recommendations to the 2011 Regular Session of the 2011 General Assembly upon its convening.

This section became effective August 2, 2010. (JLM, JM)

Referrals to Departments, Agencies, Etc.

Study the Merger of the Division of Environmental Health and the Division of Public Health

S.L. 2010-31, Secs. 13.2(a)-13.2(d) (SB 897, Secs. 13.2(a)-13.2(d)) directs the Division of Environmental Health (DEH) of the Department of Environment and Natural Resources and the Division of Public Health (DPH) of the Department of Health and Human Services to jointly conduct a two-phase study of the desirability and feasibility of merging those two divisions. The first phase of the study requires each division to collect certain information and report to the Fiscal Research Division and the Environmental Review Commission (ERC) on or before October 1, 2010. The second phase of the study requires consideration of the information collected during the first phase of the study and additional criteria and must be completed by January 15, 2011; the final report must be submitted to the House and Senate Appropriations Subcommittees on Natural and Economic Resources.

This section directs the ERC to study the desirability and feasibility of merging DEH and DPH and report its findings, recommendations, and legislative proposals, if any, to the 2011 General Assembly. In its study the ERC must consider the information provided and additional criteria required for the joint division study authorized above.

The section became effective July 1, 2010. (JM)

Strengthen Plastic Bag Recycling

S.L. 2010-31, Sec. 13.10(c) (SB 897, Sec. 13.10(c)) directs the Department of Environment and Natural Resources to monitor plastic bag use reduction and report the impacts the ban has had on plastic bag litter in coastal waterways adjacent to the areas to which the act applies to the Environmental Review Commission.

This subsection became effective July 1, 2010. (JLM)

Electronics Recycling

S.L. 2010-67, Sec. 6 (SB 887, Sec. 6) requires computer equipment and television manufacturers to submit annual reports to the Department of Environment and Natural Resources (DENR) on collection and recycling activities. DENR is required to report information on collection and recycling activities to the Environmental Review Commission as part of DENR's annual solid waste management report.

This section became effective July 8, 2010. (JLM)

Water Infrastructure Information Needs

S.L. 2010-144 (HB 1746) directs the Department of Environment and Natural Resources (DENR), in conjunction with other interested parties, to establish a task force to: (1) develop a statewide survey to supplement the current information used to assess the State's water and wastewater infrastructure needs; (2) develop a plan for incorporating the information compiled from the United States Environmental Protection Agency surveys into the State Water Supply Plan; and (3) develop a plan for the creation and maintenance of a statewide water and wastewater infrastructure resource and funding database.

The act also directs DENR and the Local Government Commission jointly to evaluate the costs and benefits of implementing various measures to increase the oversight of public water systems and wastewater systems to ensure that the systems are operating in a financially sound manner.

The agencies must report their findings and recommendations to the Legislative Study Commission on Water and Wastewater Infrastructure no later than November 1, 2010.

This act became effective July 22, 2010. (TD)

Conserve and Protect Agricultural Water Resources

S.L. 2010-149 (HB 1748) directs the Department of Agriculture and Consumer Services (DACS) and the Department of Environment and Natural Resources (DENR) to: (1) work with the North Carolina Farm Bureau Federation, other agricultural organizations, and farmers to develop a plan to identify and report on agricultural water infrastructure needs; (2) identify and encourage voluntary practices that conserve and protect water resources; and (3) design a cost-share program to assist farmers and agricultural landowners who implement best management practices to conserve and protect water resources related to agricultural use.

DACS and DENR must report their findings and recommendations to the Legislative Study Commission on Water and Wastewater Infrastructure no later than November 1, 2010.

This act became effective July 22, 2010. (TD)

Fishery Management Plan Development Process

S.L. 2010-152, Sec. 20 (SB 900, Sec. 20) authorizes the Division of Marine Fisheries (DMF) of the Department of Environment and Natural Resources to study the Fishery Management Plan development process. DMF specifically must consider how the process may be made more efficient without impairing public input into the process and report its findings and recommendations, including any legislative proposals, to the Joint Legislative Commission on Seafood and Aquaculture no later than October 1, 2010.

This section became effective July 22, 2010. (JH, MM)

State Agency Programs Consider Impacts of Global Climate Change

S.L. 2010-180, Sec. 13 (HB 1766, Sec. 13) requires the Departments of Administration, Agriculture and Consumer Services, Commerce, Crime Control and Public Safety, Environment and Natural Resources, Health and Human Services, Insurance, and Transportation to review their respective planning and regulatory programs to determine whether they currently consider the impacts of global climate change, including adaptation and sea level rise. The agencies must describe how any such program considers the impacts of global climate change and make recommendations for modification or expansion as determined by the agency. For programs that do not address global climate change, the agency must recommend if and how the program should consider global climate change. Each agency must report the results of its review to the Department of Environment and Natural Resources (DENR) by September 1, 2011. DENR will compile those results and report them to the Environmental Review Commission, and any future legislative commission that directly and primarily addresses global climate change, on or before November 1, 2011.

This section became effective August 2, 2010. (JM)

Chapter 11
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 *2010 Finance Law Changes* publication.

Enacted Legislation

Modify Renewable Energy Property Credit

S.L. 2010-4 (SB 388) amends the credit for investing in renewable energy property to allow the credit when the cost of the property was provided by grants made under the American Recovery and Reinvestment Tax Act of 2009. Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 provides eligible taxpayers that develop renewable energy projects a grant equal to up to 30% of the basis of property used to produce electricity from wind energy, closed-loop and open-loop biomass equipment, geothermal equipment, landfill gas, trash combustion, incremental hydropower, marine and hydrokinetic energy, fuel cell property, solar property, or small wind property. Grants of 10% are available for geothermal property not eligible for the 30% rate, qualified microturbines, combined heat and power property, and geothermal heat pumps. The act has no fiscal impact.

This act became effective January 1, 2009, and applies to renewable energy property placed into service on or after that date. (HF)

Internal Revenue Code Update

S.L. 2010-31, Sec. 31.1 (SB 897, Sec. 31.1) updates the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009, to May 1, 2010. However, the act does not conform to the five-year carryback of net operating losses (NOLs) incurred by large businesses. The act does conform to the five-year carryback for NOLs of small businesses with less than $15 million in gross receipts for the tax year in which the loss arose. The estimated loss to the General Fund for fiscal year 2010-11 is $7.7 million.

This section became effective June 30, 2010. (CA)

Small Business Tax Relief

S.L. 2010-31, Sec. 31.1A (SB 897, Sec. 31.1A) provides tax relief to small businesses for the 2010 and 2011 taxable years in the form of a refundable income tax credit equal to 25% of the amount it paid in unemployment insurance tax on wages paid to employees. A small business is a business whose cumulative gross receipts from business activity for the taxable year do not exceed $1 million. Based upon statistics compiled by the Employment Security Commission, there are approximately 125,000 businesses in North Carolina whose gross receipts are less than $1 million. These businesses employ more than 500,000 people. Most of these businesses have 10 or fewer employees. The average annual State unemployment insurance tax per employee in North Carolina is $265. The estimated loss to the General Fund for fiscal year 2010-11 is $34.1 million.

This section became effective for taxes imposed for taxable years beginning on or after January 1, 2010. (CA)

Lower Sales Tax Compliance Burden on Small Retailers

S.L. 2010-31, Sec. 31.3 (SB 897, Sec. 31.3) will require fewer retailers to submit a pre-payment of 65% of the amount of sales tax revenue for the following month by changing the threshold for this payment schedule from $10,000 to $15,000, effective October 1, 2010, and from $15,000 to $20,000, effective October 1, 2011. Some of the small retailers in this category, especially those whose sales are not consistent from month to month, have expressed a cash flow hardship with the pre-payment requirement. The threshold limit of $10,000 was enacted in 2001 as a means to accelerate the payment of sales and use tax dollars into the General Fund for fiscal year 2001-02. Prior to this change, the threshold amount for making bimonthly payments was $20,000. This provision restores the sales tax filing thresholds to their pre-2001 level of $20,000 over a two-year period. By increasing the threshold from $10,000 to $15,000, the act relieves 2,133 retailers from the pre-payment requirement. The increase of the threshold from $15,000 to $20,000 will relieve an additional 1,000 plus retailers from the pre-payment requirement. This change in the law does not change the amount of sales tax revenue remitted to the General Fund, but it does change by one month the timing of the payment for the year of the transition to the higher threshold. It reduces the amount of revenue received in fiscal year 2010-11 by $7 million and the amount received in fiscal year 2011-12 by $12 million.

This section becomes effective October 1, 2010. (CA)

Relieve Annual Report Compliance Burden on Small Business

S.L. 2010-31, Sec. 31.4 (SB 897, Sec. 31.4) addresses an issue with the annual report filing requirement for limited liability companies (LLC). In March 2009, the Secretary of State's Office mailed 270,000 notices to businesses stating they were late in filing annual reports. Failure to file an annual report is grounds for administrative dissolution. The Secretary of State found that many businesses believed their first annual reports were due the year after their formation. The Secretary of State informed the businesses that the first annual report is due on April 15th, regardless of when the business was formed. Under this interpretation, a LLC that filed its articles of organization on April 10th and paid the $125 filing fee also would have to file an annual report five days later, along with a $200 annual report filing fee. Section 31.4 provides the first annual report required to be filed by a LLC is due by April 15th of the year following the calendar year in which the company files its articles of organization. To address the immediate situation, it stipulates in the effective date section that a LLC whose articles of organization were filed on or after January 1, 2010, but before April 15, 2010, is not required to file an annual report until April 15, 2011. A LLC that was formed on or after January 1, 2001, but before January 1, 2010, and has filed an annual report for each year after the calendar year in which its articles of organization were filed, is considered to have met its annual report filing requirements. The estimated loss to the General Fund for fiscal year 2010-11 is $400,000.

This section became effective June 30, 2010. (CA)

Extend Sunset on Expiring Tax Incentive Income Tax Credits and Sales Tax Refunds

S.L. 2010-31, Sec. 31.5 (SB 897, Sec. 31.5) extends the sunset on the following four tax incentive provisions. The section does not impact General Fund revenues in fiscal year 2010-2011.

- Tax Credit for Mill Rehabilitation. – Extends the sunset of the credit for rehabilitating vacant historic manufacturing sites from January 1, 2011, to January 1, 2014.
- Tax Credit for Qualified Business Ventures. – Extends the sunset of the credit for investments in qualified business ventures from January 1, 2011, to January 1, 2013.

- Sales Tax Refund for Passenger Air Carriers. – Extends the sunset of the sales tax refund allowed to an interstate passenger air carrier from January 1, 2011, to January 1, 2013.
- Sales Tax Refund for Motorsports Aviation Fuel. – Extends the sunset of the sales tax refund allowed to a professional motorsports racing team or a motorsports sanctioning body from January 1, 2011, to January 1, 2013.

This section became effective June 30, 2010. (CA)

Modernize Sales Tax on Accommodations

S.L. 2010-31, Sec. 31.6 (SB 897, Sec. 31.6), as amended by S.L. 2010-123, Sec. 10.2 (SB 1202, Sec. 10.2), establishes new sales and use tax and local occupancy tax reporting and remittance obligations on a "facilitator," which is a person who enters into a contract with a provider of transient accommodations to market and collect payment for the rental of accommodations. A facilitator would include an online travel company but not a rental agent. The provision is expected to increase General Fund revenues by $1.7 million for fiscal year 2010-2011.

This section becomes effective January 1, 2011, and applies to gross receipts derived from the rental of an accommodation that a consumer occupies or has the right to occupy on or after that date. (TG)

Modernize Admissions Tax and Restore Amenities Exclusion

S.L. 2010-31, Sec. 31.7 (SB 897, Sec. 31.7) does two things. First, it extends the 3% privilege tax imposed on the gross receipts of a person engaged in the business of offering or managing a taxable amusement to the Internet resale of tickets by a person engaged in the business of reselling tickets to a taxable amusement. This provision becomes effective January 1, 2011, and applies to charges for admission received on or after that date. Second, it restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase, effective for charges for admission received on or after August 1, 2010. This provision became effective August 1, 2010.

This section is expected to reduce General Fund revenues by $700,000 annually. (TG)

Give Taxpayers Notice of Revised Tax Interpretations

S.L. 2010-31, Sec. 31.7A (SB 897, Sec. 31.7A) requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. A revised interpretation may not become effective until the sooner of the following:

- For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

This section became effective June 30, 2010. (TG)

Improve Tax and Debt Collection Process

S.L. 2010-31, Sec. 31.8 (SB 897, Sec. 31.8) improves the tax and debt collection process of the Department of Revenue by:

- Expanding the use of the Setoff Debt Collection Act to allow the following: (i) debts owed by a business to be set off against a tax refund due the business, (ii) a setoff

against any type of tax refund, and (iii) a community college to submit for setoff debts owed the college.
- Authorizing the use of electronic process for sending notice of garnishment.
- Providing for a data match between the Department of Revenue and financial institutions holding accounts of delinquent taxpayers.
- Expanding the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses: Accounts receivable that are submitted to the Department of Revenue under the Setoff Debt Collection Act and overdue tax debts.

The improvements to the tax and debt collection process provided by this section are expected to increase General Fund revenue by $3 million for each fiscal year beginning in fiscal year 2010-2011.

This section became effective June 30, 2010. (MW)

Reduce Franchise Tax Burden on Construction Companies

S.L. 2010-31, Sec. 31.9 (SB 897, Sec. 31.9) applies the provision enacted last session excluding from a corporation's franchise tax base all billings in excess of costs retroactively to taxable years beginning on or after January 1, 2007. The 2009 legislation (S.L. 2009-422) was effective for taxable years beginning on or after January 1, 2010. The Department of Revenue audited some companies and assessed additional tax for taxable years prior to 2010 for excluding billings in excess of costs from their capital base. This section allows a taxpayer that paid franchise tax in taxable years 2007, 2008, or 2009 and that included billings in excess of costs in its capital base to apply to the Department for a refund of any excess tax paid to the extent the refund is the result of the retroactive application of the billings in excess law change. A request for a refund must be made on or before January 1, 2011. A request for a refund received after that date is barred. The change will reduce General Fund revenues by $1.5 million in fiscal year 2010-2011.

This section became effective June 30, 2010. (TG)

Fair Tax Penalties

S.L. 2010-31, Sec. 31.10 (SB 897, Sec. 31.10) provides that a penalty for understatement of tax due does not apply to a taxpayer who complies with the Secretary of Revenue's request and files a consolidated or combined return, and a failure to pay penalty does not apply to a taxpayer who has requested a hearing on the tax liability used as the basis for the penalty. This section requires a corporation to file a consolidated or combined return when the corporation's facts and circumstances meet those described in a permanent rule adopted by the Department of Revenue or when they meet those described in a letter of written advice provided by the Secretary to the corporation at the request of the corporation. This section does not impact General Fund revenues.

This section became effective June 30, 2010. (CA)

No Add-Back for Film Credit/Apportionment

S.L. 2010-89 (HB 713) does the following:
- Reduces the corporate tax liability of a taxpayer who claims the film credit by providing that the taxpayer does not have to make an addition to federal taxable income when computing North Carolina taxable income for the amount of the credit taken against the tax. The film credit change will result in an annual revenue loss to the General Fund of approximately $800,000, beginning in fiscal year 2011-12.

- Increases the period of time for which the Secretary of Revenue may allow a corporation to use an alternative apportionment formula from three taxable years to fifteen taxable years. The fiscal impact of increasing the period of time for which a taxpayer may use an alternative apportionment formula is unknown.

The change in the corporate income tax law applicable to taxpayers claiming the film credit becomes effective for taxable years beginning on or after January 1, 2011. The remainder of the section became effective July 11, 2010. (CA)

Keeping North Carolina Competitive Act

S.L. 2010-91 (SB 1171) provides the following tax incentives requested by the Department of Commerce to aid in its recruitment initiatives. The incentives will reduce General Fund revenues by $8.9 million in fiscal year 2010-2011.

- Expansion of the sales tax exemption available to an Internet datacenter for the electricity and business property used at its facility.
- Annual refund of the sales and use tax paid on building materials, supplies, fixtures, and equipment to construct a paper-from-pulp manufacturing facility and a turbine manufacturing facility.
- Modification of the requirements for a datacenter to qualify for the 1%, $80 per article cap, excise tax on the machinery and equipment it purchases that would allow it to meet its investment threshold through the construction of two facilities, rather than one facility. The act also extends the sunset on this provision from July 1, 2013, to July 1, 2015.
- Creation of an option for contractors and subcontractors that allows them to elect to pay the lower 1%, $80 per article cap, excise tax, rather than the sales and use tax on its purchases of machinery and equipment in connection with a datacenter.
- Modification of the circumstances under which the Department of Commerce may extend a business' base period and the length of that extension under the Job Development Investment Grant Program. This section became effective July 11, 2010, and applies to all agreements in effect on or entered into after that date. This section expires January 1, 2013.

Except as otherwise noted, this act became effective July 1, 2010. (TG)

Revenue Laws Technical and Administrative Changes

S.L. 2010-95 (SB 1177) makes technical, clarifying, and administrative changes to various tax statutes and related laws.

This act became effective July 17, 2010. (CA)

Homebuilder Property Tax Deferral Change

S.L. 2010-140 (HB 1249) provides that residences constructed by a builder and owned by the builder or a business entity of which the builder is a member may qualify for the homebuilders' inventory property tax deferral program. In 2009, the General Assembly created a property tax deferral program for occupant-ready residences constructed and owned by a general contractor for resale on a parcel of real property. The amount of property tax liability that can be deferred is the portion of tax that represents the increase in the property value resulting from the construction of the residence on the property. Under previous law, the property had to be owned by a builder, and interpretive conflicts arose in situations where a builder constructed a residence on the property, the title to which was held by a business entity of which the builder was a member. This act addresses that conflict and allows property so held to qualify for the deferral program.

This act became effective for taxes imposed for taxable years beginning on or after July 1, 2010. (DE)

Various Economic Incentives

S.L. 2010-147 (HB 1973) enhances several of North Carolina's existing economic development tools and creates some new incentives. The act does not have a fiscal impact in fiscal year 2010-2011. The act does the following:

- Extends the sunset for the following tax credits:
  - Article 3J.
  - Oyster shell recycling.
- Enhances the film production tax credits, effective for taxable years beginning on or after January 1, 2011.
- Creates a new tax credit for interactive digital media, effective for taxable years beginning on or after January 1, 2011.
- Creates economic development incentives and favorable tax treatment for Eco-Industrial Parks.
- Exempts certain wood chippers from sales tax, effective July 1, 2009.
- Provides funding for the DNA Database and Databank. See **Criminal Law and Procedure**, S.L. 2009-94 (HB 1403).
- Encourages the Department of Administration to consider the use of multiple award schedule contracts when issuing requests for proposals for State term contracts.

Except as otherwise noted, this act became effective July 22, 2010. (TG)

Sales Tax Changes/Study Competing Systems

S.L. 2010-153 (HB 455) allows cities that jointly operate a cable television system to obtain a refund of State and local sales and use tax paid by the entity on purchases made between July 1, 2007, and June 30, 2010. The request must be made in writing before January 1, 2011. The estimated fiscal impact of this provision for the State's General Fund is a revenue loss of less than $25,000; it also reduces local sales tax revenues by approximately $5,000.

This act became effective July 22, 2010. (CA)

Economic Incentives Alignment and Changes

S.L. 2010-166 (SB 1215) harmonizes sunset and reporting features and requirements across the State's various economic incentives, creates a single, unified economic incentives report that contains the information currently reported separately for each economic incentive, and deletes obsolete credits for large recycling facilities and for major computer manufacturing facilities. Under previous law, many of the economic incentives enacted in Chapter 105 of the General Statutes as the Article 3 credits, the income tax credits in Article 4, and the sales and use tax benefits in Article 5 had some combination of reporting requirements and sunset provisions; however, those requirements were not uniformly set out in each incentive. Where reporting requirements were set out, there were inconsistencies with respect to itemization by taxpayer, itemization by credit, the reporting entity, and other miscellaneous differences. In addition, there were two economic incentives that either were never utilized or were no longer being utilized. The first was the credit in Article 3C for large recycling facilities, which was intended for Wisconsin Tissue; however, that company never located in North Carolina. The second credit was the credit for major computer manufacturing facilities in Article 3G. Other than the Dell facility for which the credit was enacted, no other taxpayer utilized that credit. The act does not have a fiscal impact in fiscal year 2010-2011.

This act became effective July 1, 2010. (DE)

Renewable Energy Incentives

S.L. 2010-167 (HB 1829) extends credits for constructing renewable fuel facilities and biodiesel producers, modifies definitions for the credit for investing in renewable energy property, reinstates and expands the credit for a renewable energy property facility, clarifies the local government authority to finance energy programs, clarifies that real property donated for conservation purposes can be used only for those purposes, and clarifies who is responsible for making the allocation of the federal §179D tax deduction. The act will reduce General Fund revenues by $700,000 in fiscal year 2010.

This act became effective August 2, 2010, and applies to taxable years beginning on or after 2010. (HF)

Studies

Referrals to Existing Commissions/Committees

Studies Act of 2010

S.L. 2010-152, Part VII (SB 900, Part VII) authorized the Revenue Laws Study Committee to study the following topics:

- Ticket Resale.
- Local Cable Service Franchise Agreements.
- Local Government Owned and Operated Communication Systems.

This Part became effective July 22, 2010. (CA)

Chapter 12
Health and Human Services

Susan Barham (SB), Theresa Matula (TM), Shawn Parker (SP),
Ben Popkin (BP), Barbara Riley (BR)

Enacted Legislation

Commission on Children with Special Needs – Dentist

S.L. 2010-12 (HB 1694) adds a member to the Commission on Children with Special Health Care Needs. This additional member will be recommended by the North Carolina Dental Society, appointed by the Governor, and must be a licensed dentist who provides services to children with special needs.

This act became effective June 23, 2010. (TM)

Electronic Benefits Transfer System for Child Care Subsidy

S.L. 2010-31, Sec. 10.1 (SB 897, Sec. 10.1) directs the Department of Health and Human Services (Department) to implement an Electronic Benefits Transfer system for child care subsidy. The section further directs the Department to review the electronic card systems used for Child Support Enforcement and Food and Nutrition Services and determine efficiencies of combining the coordination of all three systems. The section directs the Department to monitor the implementation of "smart card" pilots in Georgia and Texas and provide any recommendations by May 1, 2011.

This section became effective July 1, 2010. (SP)

Report on Department of Health and Human Services Position Eliminations

S.L. 2010-31, Sec. 10.5A (SB 897, Sec. 10.5A) allows the Secretary of the Department of Health and Human Services to achieve greater savings by adjusting the position reductions prescribed in the Joint Conference Committee Report. On or before March 1, 2011, the Secretary is required to report on position reductions 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 report must include the number of positions, both vacant and filled, that are eliminated for the 2010-11 fiscal year and the savings generated by the elimination.

This section became effective July 1, 2010. (TM)

Mental Health Changes

S.L. 2010-31, Sec. 10.6 (SB 897, Sec. 10.6) makes the following changes to the system of mental health, developmental disabilities, and substance abuse services reform:

- **Local Inpatient Psychiatric Beds or Bed Days.** – Funding for the purchase of local inpatient beds is increased to $29,121,644 for the 2010-2011 fiscal year, and the Department of Health and Human Services (Department) is directed to award contracts for the management of the beds equitably around all regions of the State.
- **Supports Intensity Scale Assessment Tool Pilot Project.** The seven Local Management Entities (LMEs) participating in the current Supports Intensity Scale

(SIS) assessment tool pilot project must administer a SIS assessment to all clients with developmental disabilities by October 1, 2010. LMEs must use the results from the SIS assessment to assign clients with developmental disabilities to one of the tiers in the CAP-MR/DD Waiver. The Department must report on the progress of the pilot no later than April 1, 2011.

This section became effective July 1, 2010. (SB)

Area Mental Health Boards – Term Limits

S.L. 2010-31, Sec. 10.7 (SB 897, Sec. 10.7) authorizes county commissioners and county managers to serve more than two consecutive terms on an Area Mental Health Board, provided the term does not exceed the duration of the member's employment as county manager or service as county commissioner. The section clarifies that service on the mental health board in this capacity is at the pleasure of the initial appointing authority.

This section became effective July 1, 2010. (SP)

Community Alternatives Program – Mentally Retarded/Developmentally Disabled Service Eligibility

S.L. 2010-31, Sec. 10.7A (SB 897, Sec. 10.7A) provides that former Thomas S. recipients currently living in community placements may continue to receive State funded services. Other Community Alternatives Program-Mentally Retarded/Developmentally Disabled (CAP-MR/DD) recipients are ineligible for State funded services, except for those services for which there is not a comparable service under the CAP-MR/DD waiver.

This section also directs the Department of Health and Human Services (Department) to work with stakeholders to develop a new service definition within the CAP-MR/DD waiver to better meet the needs of individuals who (i) have a high intensity of behavioral needs, (ii) reside in small licensed residential placements, and (iii) require supervision 24 hours per day, 7 days per week, 365 days per year. The Division must apply to the Centers for Medicare and Medicaid Services (CMS) for an appropriate amendment to the CAP-MR/DD waiver if such approval is required. The Department must report by October 1, 2010, 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, on the development of the new service definition and the status of any necessary approval from CMS to implement the new service definition.

This section became effective July 1, 2010. (BR)

Report on Behavioral Health Crisis Services Provided in Hospital Emergency Rooms

S.L. 2010-31, Sec. 10.7B (SB 897, Sec. 10.7B) directs the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division) to evaluate the provision of behavioral health crisis services by State and local emergency departments based on local management entity catchment areas. The evaluation must include such information as:

- The number of times emergency departments are utilized for behavioral health crisis services.
- The length of stay for admitted patients for these services.
- The number of patients readmitted for these services within 30 days of discharge.

The evaluation also must include a comparison of information for catchment areas of LMEs that utilize a Medicaid 1915(b)(c) waiver program.

This section became effective July 1, 2010. (SP)

Immunization Changes

S.L. 2010-31, Sec. 10.13 (SB 897, Sec. 10.13) eliminates the State appropriation for purchase of the following vaccines and immunizations, as they are reimbursed by health insurers or are supplied by the federal government through the Vaccine for Children program.

- Diphtheria, Pertussis, Tetanus Toxoid (DPT).
- Polio.
- Measles, Mumps, Rubella (MMR).
- Influenza.
- Pneumococcal vaccine.
- Human Papilloma virus (HPV).
- Haemophilus Influenzae Type b (Hib) vaccine.
- Hepatitis B.
- Meningococcal vaccine.
- Varicella.
- Rotavirus.
- Hepatitis A.
- Tetanus, Diphtheria, Pertussis (TdaP).

Of the funds appropriated for the Childhood Immunization Program, $3 million in nonrecurring funds for fiscal year 2010–2011 must be used by the Division of Public Health for the stocking of required childhood vaccines for the 2010-2011 school year for children with health insurance coverage. Local health departments are directed to seek reimbursement from licensed health insurers in order to maintain the necessary inventory of childhood vaccines.

This section became effective July 1. 2010. (BR)

Community Care of North Carolina

S.L. 2010-31, Sec. 10.15 (SB 897, Sec. 10.15) directs the Department of Health and Human Services (Department) to contract with North Carolina Community Care Networks, Inc. (NCCCN) and its 14 participating local Community Care of North Carolina (CCNC) networks to provide standardized clinical and budgetary coordination, oversight, and reporting for a Statewide Enhanced Primary Care Case Management System (PCCM) for Medicaid enrollees. NCCCN will make quarterly reports of its progress to the Department and the Office of State Budget and Management (OSBM), which will complete an assessment of NCCCN's performance by January 1, 2012. The assessment will provide the basis for the Department and the Division of Medical Assistance (DMA) to expand, alter, or cancel the contract with NCCCN and CCNC, effective April 1, 2012.

This section directs the Department, DMA, and NCCCN to finalize a comprehensive management plan, including specified measures, by July 1, 2012, and directs the Department to establish a separate line item for all DMA expenditures associated with managed care activities relating to CCNC Medicaid expenditures.

This section became effective July 1, 2010. (BP)

State-County Special Assistance Consolidating Changes

S.L. 2010-31, Sec. 10.19A (SB 897, Sec. 10.19A) changes "State-county special assistance for adults" to "State-county special assistance." Assistance may be granted to any person who is 65 years of age and older, to any person between the ages of 18 and 65 who

is permanently and totally disabled, and to any person who is legally blind according to definitions of a blind person under North Carolina laws governing aid to the blind.

This section became effective July 1, 2010. (TM)

Office of Education Services – Transfer of Residential and Preschools for the Deaf and Blind

S.L. 2010-31, Sec. 10.21A (SB 897, Sec. 10.21A). See **Education**.

Medicaid Policy Changes

S.L. 2010-31, Sec. 10.22 (SB 897, Sec. 10.22) amends the operation and funding of State Medicaid operations relating to prescription drugs by:

- Authorizing the Department to impose prior authorization requirements on brand name drugs for which the phrase "medically necessary" is written on the prescription.
- Allowing the Secretary of Health and Human Services to prevent the substitution of generic drugs for brand name drugs if, after consideration of all rebates, the cost is less than the generic.
- Requiring the inclusion of medications prescribed for mental illness on the Preferred Drug List.
- Limiting coverage to procedures recognized or approved by the National Institutes of Health.
- Directing the Department to apply Medicaid medical policy to recipients who have primary insurance other than Medicare, Medicare Advantage, and Medicaid.

This section became effective July 1, 2010. (SP)

Statewide Expansion of Medicaid 1915(b)(c) Behavioral Health Waiver

S.L. 2010-31, Sec. 10.24 (SB 897, Sec. 10.24) directs the Department of Health and Human Services (Department) to select up to two additional Local Management Entities to implement the capitated 1915(b)(c) Medicaid waiver for the 2010-2011 fiscal year. The section directs an evaluation of the capitated 1915(b)(c) Medicaid waiver demonstration program sites to determine the programs' impact on consumers with developmental disabilities, including a consumer satisfaction survey. The section prohibits the Department from approving any expansion of the Piedmont Behavioral Healthcare LME (PBH) beyond its existing catchment area until after the Department has completed and reported on this evaluation.

This section became effective July 1, 2010. (SP)

Medicaid Fraud Prevention

S.L. 2010-31, Sec. 10.26 (SB 897, Sec. 10.26) authorizes the Department of Health and Human Services (Department) to create a fraud prevention program that uses information, lawfully obtained from State and private databases, to develop a fraud risk analysis of Medicaid providers and recipients. This information must be privileged and confidential, is not a public record pursuant to G.S. 132-1, and may be used only for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. All records and information obtained pursuant to this section must be destroyed after five years, unless there has been criminal, civil, or administrative action involving the records and information obtained.

The section authorizes the Department to modify or extend existing contracts to achieve Medicaid fraud prevention savings in a timely manner, subject to review and approval by the Secretary of the Department of Administration.

This section became effective July 1, 2010. (SP)

Medicaid Recipient Appeals Process

S.L. 2010-31, Sec. 10.30 (SB 897, Sec. 10.30) creates a new Part 6A in Article 22 of Chapter 108A of the General Statutes to govern the process used by a Medicaid recipient to appeal an adverse determination made by the Department of Health and Human Services (Department). For recipients who have been denied, terminated, suspended, or reduced benefits, the section directs the Department to notify the recipient at least 10 days before the adverse determination is effective and to inform the recipient of the right to appeal the adverse determination. The recipient has 30 days to appeal and, if appealed, the appeal is a contested case to be heard by an administrative law judge. Prior to the hearing before the administrative law judge, mediation must be offered to the recipient. If mediation is successful, the mediator must inform the Department and the Office of Administrative Hearings (OAH) and the administrative law judge must dismiss the case. If mediation is unsuccessful, the administrative law judge must hear the case and make a determination. The burden of proof in the hearing is the on recipient to show entitlement to a requested benefit or propriety of a requested action, and it is on the Department if the adverse determination being appealed is imposing a penalty or is reducing, terminating, or suspending a benefit previously granted. The final agency decision must be made within 20 days of the receipt of the administrative law judge's decision.

The section directs the Department and OAH to report to the House and Senate Appropriations Subcommittees on Health and Human Services; the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services; and the Fiscal Research Division, on the number, status, and outcome of contested Medicaid cases handled by OAH pursuant to the appeals process established in Part 6A of Article 2 of Chapter 108A of the General Statutes. The report must include information on the number of contested Medicaid cases resolved through mediations and through formal hearings, the outcome of settled and withdrawn cases, and the number of incidences in which the Division of Medical Assistance (DMA) reverses the decision of an administrative law judge, along with DMA's rationale for the reversal. The report must be submitted not later than October 1, 2011.

This section became effective July 1, 2010. (SP)

Medicaid Changes

S.L. 2010-31, Sec. 10.35 (SB 897, Sec. 10.35) makes changes primarily to the following services: In-Home Care, Personal Care Services, Mental Health Residential Services, and Private Duty Nursing.

In-Home Care – On January 1, 2011, or upon approval by the Centers for Medicare and Medicaid Services (CMS) for elimination and replacement of Personal Care Services (PCS) and PCS-Plus, whichever is later, the Department of Health and Human Services, Division of Medical Assistance (DMA) will implement the provisions below.

- Replace PCS and PCS-Plus with two categories of in-home care services as shown below, and provide a Medical Coverage Policy for each. The section prescribes limitations and restrictions for the in-home care services, and sets out an admission process that requires a physician's written authorization and attestation as to the medical necessity for the services.
    - **In-Home Care for Children (IHCC)** will provide services to help meet in-home care needs of children, including individuals under the age of 21 who are receiving comprehensive and preventive child health services through the Early

and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. In accordance with existing law establishing procedures for changing medical policy (G.S. 108A-54.2), an individual may qualify for up to 60 hours per month based on an assessment conducted by DMA, or a designee, and a plan of care developed by the service provider and approved by DMA, or a designee. Additional hours may be authorized under certain conditions.

- **In-Home Care for Adults (IHCA)** will provide services to assist with the following activities of daily living (ADLs): Eating, dressing, bathing, toileting, and mobility for individuals 21 years of age or older who, because of a medical condition, disability, or cognitive impairment, demonstrate unmet needs for a minimum of (i) three of the five qualifying ADLs with limited hands-on assistance; (ii) two ADLs, one of which requires extensive assistance; or (iii) two ADLs, one of which requires assistance at the full dependence level. IHCA will serve individuals who are at the highest level of need for in-home care and are able to remain safely in the home. Up to 80 hours of services may be provided per month, with an assessment conducted by DMA, or a designee, and a plan of care developed by the service provider and approved by DMA, or a designee.

- Take action to manage cost, quality, program compliance, and utilization of services provided under IHCC and IHCA.
- Follow a timeline for implementation of IHCC and IHCA:
  - Subject to the approval of the programs by CMS, the Division of Medical Assistance must make every effort to implement IHCC and IHCA by January 1, 2011.
  - The Division must ensure that individuals qualified for IHCC and IHCA do not have a lapse in service. When an independent reassessment has not been performed and the current assessment documents that the medical necessity requirements for IHCC or IHCA have been met, then an individual must be admitted on the basis of the current provider assessment.
  - In accordance with federal hearing requirements (42 C.F.R. Section 431.220(b)), prior to implementation of IHCC and IHCA, recipients in the PCS and PCS-Plus programs must be notified and discharged, and these programs will terminate. However, recipients qualifying for IHCC and IHCA must be admitted and eligible to receive services immediately.

Personal Care Services

- The Department is required to conduct a study to determine the cost effectiveness, efficiencies gained, and challenges of transitioning the performance of independent assessments to Community Care of North Carolina for PCS, IHCC, or IHCA services. On or before January 1, 2011, the Department must 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.
- The Division of Medical Assistance (DMA) is required to study the incidence of fraud, waste, or abuse by Medicaid PCS providers and recipients and by Medicaid IHCC or IHCA providers and recipients. On or after January 1, 2011, and annually thereafter, the Division must report findings to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Mental Health Services

- The Department is required to study the effectiveness of the length of stay limitation and the number of children staying in Level II, II, and IV facilities. The Department must report findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before January 1, 2011, and provide update reports at six-month intervals over a three-year period.

- Following the 16th visit, the DMA must require prior authorization for outpatient mental health services for children.

Private Duty Nursing

- The DMA must change Medicaid Private Duty Nursing (PDN) by restructuring the program as follows:
  - Services provided only to qualified recipients under the age of 21.
  - Services must be authorized by the recipient's primary care or attending physician.
  - Services must be limited to 16 hours per day, unless additional services are required to correct or ameliorate defects and physical and mental illnesses and conditions defined by federal law (42 U.S.C. Section 1396d(r)(5).)
  - Services are based on an initial assessment and continuing need reassessments performed by an Independent Assessment Entity that does not provide PDN services and authorized in amounts that are medically necessary based on the recipient's medical condition, amount of family assistance, and other relevant conditions.
  - Services must be provided in accordance with a plan of care approved by DMA or designee.
  - A Home and Community Based Services Waiver for individuals dependent on technology to substitute for a vital body function must be developed and submitted to CMS.
  - Transition qualified recipients age 21 and older and currently receiving PDN to waiver services provided under the Technology Dependent Waiver upon approval by CMS and the Medicaid Clinical Coverage Policy.

This section became effective July 1, 2010. (TM)

Medicaid Waiver for Assisted Living

S.L. 2010-31, Sec. 10.35A (SB 897, Sec. 10.35A) requires the Division of Medical Assistance, Department of Health and Human Services, to develop and implement either a Home and Community Based Services Assisted Living Program or an Assisted Living Services Program under the State Medicaid Plan in an effort to continue Medicaid funding of Personal Care Services to individuals living in adult care homes. The division must determine which program to implement based on the analysis of which alternative best addresses resident needs and federal requirements. The Division is required to apply for program approval to the Centers for Medicare and Medicaid Services by August 10, 2010. By January 1, 2011, the Division must report on the program to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2010. (TM)

Project C.A.R.E. (Caregiver Alternatives to Running on Empty)

S.L. 2010-31, Sec. 10.35B (SB 897, Sec. 10.35B) directs the Division of Aging and Adult Services, Department of Health and Human Services, to annually develop and implement a plan for Project C.A.R.E. (Caregiver Alternatives to Running on Empty). Beginning October 1, 2010, and annually thereafter, the Division must report to the Governor's Advisory Council on Aging, the North Carolina Study Commission on Aging, and the Fiscal Research Division.

This section became effective July 1, 2010. (TM)

Implement Independent Assessments on Mental Health Services

S.L. 2010-31, Sec. 10.36 (SB 897, Sec. 10.36) directs the Division of Medical Assistance (DMA), Department of Health and Human Services, to require an independent assessment prior to delivering enhanced mental health services in the Medicaid program. The independent assessment must meet the following criteria:

- The initial assessment or a continuing need assessment is conducted by an independent assessment entity (IAE) that is not the provider of the service in question.
- The IAE authorizes type and amount of service that meets the needs of the recipient and is based on a specific health condition.

If DMA does not achieve the savings required as a result of implementation of independent assessments, DMA also must require independent assessment prior to delivering services to the following groups:

- Individuals exiting inpatient facilities.
- High cost/high risk individuals with medical or high behavioral health needs.
- Individuals moving to a more intensive level of care.
- Requests for additional continuing care authorizations.

On or before April 1, 2011, DMA must report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on any savings generated by the implementation of independent assessments.

This section became effective July 1, 2010. (SB)

Update Long-Term Care Statutes

S.L. 2010-66 (HB 1698) amends inconsistent and antiquated statutory language and incorporates references to "long-term services and supports" and "person-centered services" as current programs and services. The act also incorporates the use of "Community Resource Connections for Aging and Disabilities," which is the name North Carolina has adopted for aging and disability resource centers.

This act became effective July 8, 2010. (TM)

Implement Long-Term Care Partnership Program

S.L. 2010-68 (SB 1193) establishes the North Carolina Long-Term Care Partnership Program (Program) to be administered by the Division of Medical Assistance, Department of Health and Human Services, with assistance from the Department of Insurance. The Program allows an individual who applies for long-term care Medicaid and who has a qualified long-term care partnership policy ("qualified policy") to protect a portion of the individual's assets from consideration for the purposes of:

- Determining eligibility for enrollment into long-term care Medicaid (resource disregard).
- Estate recovery actions for payment of care provided to the enrollee, once they are deceased (resource protection).

The amount protected under both resource disregard and resource protection will be equal to the dollar amount of benefits actually paid to, or on behalf of, the individual under the qualified policy from the date the qualified policy was issued to the date the individual applied for long-term care Medicaid.

In order to be considered a qualified long-term care partnership policy, the policy must:

- Meet multiple federal requirements.
- Be issued on or after the effective date of the act.
- Cover an insured individual who is a resident of North Carolina, or a state with a reciprocal partnership program.
- Include specified inflation protection coverage.
- Include specified disclosure notices to the policy holder or insured regarding the application of resource disregard and resource protection.

Additionally, the act:

- Authorizes the Department of Health and Human Services to adopt rules and amendments to the Medicaid State Plan to allow for resource disregard at long-term care Medicaid eligibility determination and resource protection at estate recovery.
- Authorizes the Department of Health and Human Services to enter into reciprocal agreements with other states that are party to a national reciprocity agreement to extend the resource disregard and resource protection to State residents who purchased, or purchased and used, a qualified long-term care policy in another state.
- Authorizes the Department of Insurance to adopt rules conforming State long-term care policies and certificates to the requirements of federal law and regulations, and to adopt rules to provide for implementation and administration of the Partnership Program.
- Requires insurers to provide policy holders with certain disclosure notices relating to loss of qualified policy status.
- Provides that within 180 days of the date when an insurance company starts to offer qualified policies, the insurer must offer to holders of existing long-term care insurance policies issued on or after February 8, 2006, a onetime offer to exchange the existing policy for a qualified policy. A qualified policy issued as a result of this exchange is to be treated as newly issued and is eligible for qualified policy status.
- Allows the Commissioner to share "identifying information" related to the long-term care partnership program with other state and federal agencies, the National Association of Insurance Commissioners, and any entity contracting with the federal government under the partnership program.

This act becomes effective January 1, 2011, or 60 days after approval of the Medicaid State Plan amendment, whichever is later. (TM)

Health Choice Program Review Process

S.L. 2010-70 (HB 382) creates a review process for eligibility, enrollment, and service determinations of the North Carolina Health Choice for Children Program. The provision continues the existing eligibility and enrollment appeals process (which had been the responsibility of the Executive Administrator and Board of Trustees of the State Health Plan for Teachers until June 30, 2010, and shifted to the Department of Health and Human Services after that date) and creates a new, two-level (internal and external) review process for decisions to delay, deny, reduce, suspend, or terminate services to Health Choice recipients, as well as for determinations of the type or level of services provided.

This act became effective July 1, 2010, and applies to reviews of Health Choice Program enrollment, eligibility, or health services decisions requested by Health Choice Program applicants or recipients on or after that date. (BP)

Improve Child Care Nutrition – Activity Standards

S.L. 2010-117 (HB 1726) directs the Child Care Commission to consult with the Division of Child Development, Department of Health and Human Services, when developing nutrition standards for child care facilities. The Division is required to:

- Examine current levels of physical activity children receive in child care facilities.
- Examine current nutrition standards for children in child care facilities.
- Report any findings and recommendations to the Legislative Task Force on Childhood Obesity, the Public Health Study Commission, and the Fiscal Research Division.

This act became effective July 20, 2010. (SB)

Pooled Trusts – Medicaid Reimbursement

S.L. 2010-118 (SB 765) amends Chapter 36D of the General Statutes, which regulates trusts established for the benefit of persons with "severe chronic disabilities", to use "people first" language in references to persons with disabilities, and to make the following changes:

- Updates definitions to make reference to and conform to federal law.
- Includes references to Community Third Party Trusts, Medicaid Pooled Trusts, and Special Needs Trusts, as appropriate, throughout the Chapter.
- Specifies that Community Third Party Trusts and Medicaid Pooled Trusts may retain no more than 50% of the surplus trust funds remaining in the trusts.
- Specifies that, upon termination of a Community Third Party Trust, Medicaid Pooled Trust, or Special Needs Trust account, the surplus trust funds remaining must be used to pay the Department of Health and Human Services "an amount equal to the total medical assistance paid on behalf of or to the disabled individual by the Department."
- Includes new provisions in Chapter 36D governing the administration, accountability, purchases, payments, disbursements from, and termination of, Special Needs Trusts.

The act further requires that when ordered by a court, inventories, annual accountings, and final accountings must be filed with, and are subject to, approval of the clerk of court.

This act became effective July 9, 2010. (SP)

Extend and Expand First Commit Pilot

S.L. 2010-119 (SB 1309) extends the sunset on the First Commitment Pilot Program until October 1, 2012, and authorizes the Secretary to expand the program to include up to 20 local management entities. Under the "First Commitment Pilot Program," the Secretary is authorized to approve LME requests to substitute appropriately trained licensed clinical social workers, masters level psychiatric nurses, or masters level certified clinical addictions specialists to conduct first-level examinations in the involuntary commitment process.

The act further directs the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to expand its training requirements to include refresher training and to evaluate the participation rate of eligible examiners and report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

This act became effective July 8, 2010. (SP)

Animal Euthanasia Technicians

S.L. 2010-127 (HB 1741). See **Agriculture.**

Continuing Care Retirement Community – Home Care

S.L. 2010-128, Secs. 1-4 (SB 354, Secs. 1-4) amends the law on Continuing Care Retirement Communities (CCRC) to allow the provision or arrangement of home care services to an individual who has entered into a continuing care contract with a provider but is not yet receiving lodging with the provider. A contract to provide continuing care without lodging must specify the procedures for determining when the individual will transition to receiving both lodging and health-related services.

A CCRC that wishes to provide or arrange for the provision of continuing care services without lodging must submit the following to the Department of Insurance:

- An application to offer continuing care services without lodging.
- An amended disclosure statement with the type and description of services that will be provided without lodging, the target market, and the fees to be charged.
- A copy of the written service agreement containing those provisions as prescribed in current law.
- A summary of an actuarial report that presents the impact of providing continuing care services without lodging on the overall operation of the CCRC.
- A financial feasibility study prepared by a certified public accountant showing the financial impact of providing continuing care services without lodging on the applicant and the continuing care retirement facility or facilities. The study must include a statement of activities reporting the revenue and expense details for providing continuing care services without lodging, as well as any impact the provision of these services will have on operating reserves.
- Evidence of a license to provide home care services, or a contract with a licensed home care agency for the provision of home care services, to those individuals under the continuing care services without lodging program.

Additionally, the act increases from $500 to $1,000 the application fee for a continuing care license.

This act became effective July 21, 2010; the fee increase became effective July 21, 2010 and applies to applications filed on or after that date.

See **Studies** in this Chapter for a summary of Section 5 of this act. (TM)

Early Education Certification

S.L. 2010-178 (SB 1119) requires all early care and education providers working in licensed child care centers or licensed family child care homes to obtain and maintain early educator certification as follows:

- Teaching staff in licensed child care centers as of October 1, 2010, must have their education certified by the North Carolina Institute for Child Development Professionals (Institute) by July 1, 2012. Teaching staff hired to work in licensed child care centers after October 1, 2010, must have their education certified by the Institute within 60 days of hiring.
- Licensed family child care home providers in operation as of October 1, 2010, must have their education certified by the Institute by July 1, 2012. Licensed family child care home providers that begin operation after October 1, 2010, must have their education certified by the Institute within 60 days of licensing.
- Child care administrators must have their education certified with an Administrator Endorsement by July 1, 2012. Child care administrators hired after July 1, 2012, must have their education certified with an Administrator Endorsement within 60 days of hiring.

This act became effective August 2, 2010. (SB)

Prohibit Medicaid Fraud – Kickbacks

S.L. 2010-185 (SB 675) makes it a Class I felony to knowingly and willfully solicit or receive remuneration including kickbacks, bribes , or rebates in return for or to induce a person to:

- Refer an individual to a person for the furnishing, or arranging of the furnishing, of an item or service paid for in whole or in part with Medicaid funds.
- Purchase, lease, order, arrange for, or recommend the purchase, lease, or order of any good, facility, service, or item paid for in whole or in part with Medicaid funds.

The act exempts contracts between the State and public or private agencies that have the responsibility to refer persons to Medicaid providers and exempts certain conduct and activity deemed acceptable by the federal Government.

This act becomes effective December 1, 2010. (SP)

Studies

Legislative Research Commission (LRC)

Require Long-Term Care Facilities to Carry Liability Insurance

S.L. 2010-152, Sec. 2.14 (SB 900, Sec. 2.14) authorizes the LRC to study whether long-term care facilities should be required to carry liability insurance. The study may consider the following:

- Whether State law adequately protects the ability to receive just compensation if actions are taken to shield personal or business assets.
- Whether a long-term care facility should carry liability insurance as a condition of licensure.
- Whether other states require long-term care facilities to carry liability insurance as a requirement for licensure.

This section became effective July 22, 2010. (TM)

Supportive Housing Initiative

S.L. 2010-152, Sec. 2.19 (SB 900, Sec. 2.19) authorizes the LRC to study the feasibility and cost-effectiveness of establishing a statewide supportive housing initiative for individuals with mental health, developmental, or substance abuse disabilities. If the study is undertaken, the LRC must examine whether this type of initiative could achieve the following goals:

- Fewer emergency room visits and hospital admissions.
- Fewer and shorter stays in psychiatric hospitals.
- Improved treatment outcomes and overall quality of life.
- Improved levels of functioning within the community setting.
- Expanded funding resources for necessary and appropriate treatment, through Medicaid and other available sources.
- Decreased arrest, incarceration, and recidivism rates.
- Decreased rates of homelessness.
- Improved safety within the community setting for both clients and the public.
- Decreased rates of unemployment and improved supports for maintaining employment consistent with individual preferences and skills.

This section became effective July 22, 2010. (SP)

Referrals to Departments, Agencies, Etc.

Study Medicaid Provider Rates

S.L. 2010-31, Sec. 10.25 (SB 897, Sec. 10.25) directs the Department of Health and Human Services (Department) to study or contract out for a study of reimbursement rates for Medicaid providers and program benefits. The study must include:

- A comparison of Medicaid reimbursement rates in North Carolina with reimbursement rates in surrounding states and with rates in two additional states.
- A comparison of Medicaid program benefits in North Carolina with program benefits provided in surrounding states and with rates in two additional states. Selected provider rates must be studied for the initial report.

The section directs the Department to report its initial findings to the Governor, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 1, 2011.

This section became effective July 1, 2010. (SP)

Study HIV Medicaid Waiver

S.L. 2010-31, Sec. 10.27 (SB 897, Sec. 10.27) directs the Department of Health and Human Services, Divisions of Medical Assistance and Public Health, to jointly study and report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by November 1, 2010, on the financial and programmatic feasibility of reducing the waiting list for the AIDS Drug Assistance Program (ADAP) by expanding eligibility for Medicaid to HIV-positive individuals with incomes at or below 133% of the federal poverty level. The study must include an assessment of the cost-effectiveness of using State dollars to expand Medicaid eligibility to this population, as compared to using State dollars for ADAP. If the study concludes that expanding Medicaid eligibility is a cost-effective means for the State to eliminate its ADAP waiting list, then the Division of Medical Assistance must apply to the Centers for Medicare and Medicaid Services (CMS) for an appropriate waiver to implement this expansion in Medicaid eligibility. If approved by CMS, the Division must not implement the waiver, except as authorized by an act of the General Assembly appropriating funds for this purpose.

This section became effective July 1, 2010. (BR)

Nurse Aide Training Review

S.L. 2010-69 (SB 1191) directs the Division of Health Service Regulation, Department of Health and Human Services (Department), to coordinate an evaluation of the education and training requirements for nurse aides. While conducting the evaluation, the Division must include an equal number of representatives from the following entities:

- Division of Health Service Regulation, Department of Health and Human Services.
- Division of Aging and Adult Services, Department of Health and Human Services.
- North Carolina Board of Nursing.
- North Carolina Community College System.
- Direct Care Workers Association of North Carolina.
- North Carolina Medical Society.
- North Carolina Health Care Facilities Association.
- North Carolina Hospital Association.
- Association for Home and Hospice Care of North Carolina.

- North Carolina Assisted Living Association.
- North Carolina Association of Long Term Care Facilities.
- North Carolina Association of Non-Profit Homes for the Aging.
- Individuals representing residents in long-term care.

On or before November 1, 2010, the Division must report findings and recommendations regarding the appropriate levels of nurse aide education and training to the North Carolina Study Commission on Aging.

This act became effective July 8, 2010. (TM)

Medicaid Dental – Special Needs Population

S.L. 2010-88 (HB 1692) directs the Divisions of Medical Assistance and Public Health, Department of Health and Human Services, to study issues that would facilitate dental care and improved dental outcomes for individuals with special needs. The study must examine, but is not limited to:

- Feasibility and anticipated impact of expanding Medicaid dental services to include reimbursement for evidence-based topical fluoride treatment and other chemotherapeutic agents used to prevent periodontal disease in high-risk adults with special health care needs.
- Feasibility and anticipated impact of implementing facility code policies to allow certified providers to bill for each patient seen in a long-term care facility or group home on the date of the service.

On or before November 15, 2011, the Department must report findings and recommendations to the North Carolina Study Commission on Aging and the Public Health Study Commission.

This act became effective July 11, 2010. (TM)

Adult Day Care Criminal Record Check Process

S.L. 2010-93 (HB 1703) requires the Division of Aging and Adult Services, Department of Health and Human Services, to study the issue of criminal history record checks for current and prospective owners, operators, and volunteers of adult day care programs and adult day health services programs. The study should include the following:

- Identifying the positions that warrant a criminal history record check.
- Developing a process for conducting the criminal history record check.
- Designating the entities responsible for requesting and paying for the criminal history record check.
- Determining whether a State or a national criminal history record check, or both, is performed.
- Defining the relevant offenses that indicate an individual's fitness to have responsibility for the safety and well-being of program participants.
- Any other issues deemed appropriate.

On or before November 1, 2010, the Division is required to report findings and recommendations to the North Carolina Study Commission on Aging.

This act became effective July 11, 2010. (TM)

Study Child Nutrition Program

S.L. 2010-115 (SB 1152) directs the Joint Legislative Program Evaluation Oversight Committee to include a study of the operation of the Child Nutrition Program in the 2010 Work Plan for the Program Evaluation Division of the General Assembly.

This act became effective July 20, 2010. (BP)

Continuing Care Retirement Community – Home Care

S.L. 2010-128, Sec. 5 (SB 354, Sec. 5) requires the Department of Insurance and the Department of Health and Human Services to identify statutory, regulatory, or practical barriers that prevent or discourage individuals who contract with continuing care retirement communities from receiving home care services. An interim report must be provided on or before November 1, 2010, and a final report on or before September 1, 2011, to the North Carolina Study Commission on Aging and the Joint Legislative Health Care Oversight Committee.

This section became effective July 21, 2010.

See **Enacted Legislation** in this Chapter for a summary of Sections 1-4 of this act. (TM)

Joint Legislative Health Care Oversight Committee Studies

S.L. 2009-152, Part III (SB 900, 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 2011 Regular Session of the General Assembly upon its convening:

- The feasibility of establishing a State Diabetes Coordinator.
- A collaborative project for reducing medical malpractice costs and claims.
- The impact of revised eligibility requirements for Personal Care Services on seniors and disabled citizens.

This part became effective July 10, 2010. (SB)

Joint Legislative Program Evaluation Oversight Committee Studies

S.L. 2010-152, Sec. 9.1 (SB 900, Sec. 9.1) authorizes the Joint Legislative Program Evaluation Oversight Committee to include a study of the operation of the Child Nutrition Program in the 2010 Work Plan for the Program Evaluation Division of the General Assembly, with particular emphasis given to issues relating to the assessment of indirect costs to local child nutrition programs in local administrative units.

This section became effective July 22, 2010. (BP)

North Carolina Institute of Medicine Study – Needs of Young Children with Mental Health Problems

S.L. 2010-152, Part XVI (SB 900, Part XVI) authorizes the North Carolina Institute of Medicine (NCIOM) to convene a Task Force to study the needs of young children with mental health problems and their families. If the Task Force is convened it must examine multiple enumerated issues relating to the current mental health needs of young children, defined as children from birth to age five. If the Task Force is convened, the part directs the NCIOM to make an interim report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2012, and to issue a final report with findings, recommendations, and any proposed legislation to the 2013 General Assembly upon its convening.

This part became effective July 22, 2010. (SP)

Department of Health and Human Services Study – Implement Body Mass Index Screening

S.L. 2010-152, Part XVII (SB 900, Part XVII) authorizes the Division of Medical Assistance, Department of Health and Human Services, to explore the feasibility of requiring Community Care of North Carolina to implement body mass index (BMI) screening for children at risk of becoming obese and developing diabetes or other chronic diseases, who are receiving Medicaid or participating in the North Carolina Health Choice for Children Program.

If the study is undertaken, the section directs the Department to provide a report to the Legislative Task Force on Childhood Obesity, the Public Health Commission, and to the Fiscal Research Division by September 1, 2011.

This part became effective July 22, 2010. (SP)

Department of Health and Human Services Study – Supportive Housing as an Alternative to Institutionalization

S.L. 2010-152, Part XVIII (SB 900, Part XVIII) directs the Department of Health and Human Services to establish a task force to study and propose recommendations, by January 31, 2011, regarding the cost-effectiveness of supportive housing as an alternative to institutionalization of the Mental Health/Developmental Disability/Substance Abuse (MH/DD/SA) populations. The Task Force must include the following:

- Five representatives from various areas of the Department of Health and Human Services.
- One representative from the Housing Trust Fund.
- Six representatives from Local Management Entities.
- Two representatives from the North Carolina Department of Correction.
- One representative from the Division of Medical Assistance.
- One representative from Community Care of North Carolina.
- Two representatives from private providers of housing services for the mentally ill.
- Two representatives from public housing agencies.
- Two consumer representatives — a direct consumer and a family member, from a MH/DD/SA consumer/advocacy group.

The section directs the Task Force to propose a plan focusing on the following goals:

- Develop a cost-effective system of care for the MH/DD/SA population.
- Decrease the need for hospital admission of target population.
- Decrease the length of stay in psychiatric hospitals.
- Decrease incarceration rate of the MH/DD/SA populations.
- Decrease emergency room use by the MH/DD/SA populations.
- Improve level of functioning of the MH/DD/SA populations.
- Explore funding possibilities from Medicaid and other sources.
- Decrease homelessness among the MH/DD/SA populations.
- Maintain MH/DD/SA patients in community setting.
- Decrease impact on law enforcement.
- Make our communities safer for both consumers and others.
- Reduce recidivism for the MH/DD/SA population.

This part became effective July 22, 2010. (SP)

Supplemental Nutrition Assistance Program

S.L. 2010-160 (SB 1151) directs the Division of Social Services to study and recommend ways to expand and enhance the Supplemental Nutrition Assistance Program Education (SNAP-Ed

Program) in the State, and directs the Department of Health and Human Services to solicit proposals for local and State programs to educate consumers on nutrition, physical activity, and obesity prevention.

This act became effective July 23, 2010. (BP)

New/Independent Studies/Commissions

Develop Special Needs Dental Care Workforce

S.L. 2010-92 (HB 1693) directs the North Carolina Area Health Education Centers (AHEC) Program to coordinate efforts to increase the number of dental care providers for individuals with special needs. Efforts must include:

- Identifying opportunities to increase the dental care workforce available to treat individuals with special needs by working with the State's dental schools, the Community College System, and current dental providers serving individuals with special needs. These opportunities must include options that could be undertaken without additional funding.
- Working with the North Carolina State Board of Dental Examiners to explore the feasibility of allowing dental students, dental hygiene students, and assisting students to receive training in long-term care facilities under the direction of nonprofit special care dental organizations.

On or before August 1, 2011, the AHEC Program must report findings and recommendations to the North Carolina Study Commission on Aging and the Public Health Study Commission.

This act became effective July 11, 2010. (TM)

Consumer Guidelines for Hearing Aid Purchases

S.L. 2010-121 (HB 1705) requires the Hearing Aid Dealers and Fitters Board to coordinate a task force to develop guidelines for consumers seeking information and assistance in the treatment of hearing loss and the purchase of a hearing aid. The task force will include the following:

- A licensed practicing fitter and seller of hearing aids, recommended by North Carolina Hearing Aid Dealers and Fitters Board.
- A consumer of hearing aids, recommended by the Division of Services for the Deaf and Hard of Hearing.
- A practicing audiologist, recommended by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.
- A physician who treats patients with hearing loss, recommended by the North Carolina Medical Board.
- A representative of the Division of Services for the Deaf and Hard of Hearing, Department of Health and Human Services.
- A representative of the Consumer Protection Division, recommended by the Office of Attorney General.
- Other interested stakeholders.

On or before November 15, 2010, the Board is required to report findings and recommendations, including methods to disseminate hearing aid purchasing guidelines, to the North Carolina Study Commission on Aging.

This act became effective July 20, 2010. (TM)

Reestablish Legislative Task Force on Childhood Obesity

S.L. 2010-152, Part XXVI (SB 900, Part XXVI) provides that the Legislative Task Force on Childhood Obesity:

- Continue to meet as appointed through the 2010 interim and further extends the Task Force until the convening of the 2012 Session, but requires new appointments in 2011.
- Submit a report of the results of its study and recommendations to the 2011 General Assembly.
- Submit a report to the 2012 Regular Session of the 2011 General Assembly.
- Terminate upon the convening of the 2012 Regular Session of the 2011 General Assembly.

This part became effective July 10, 2010. (SB)

Legislative Task Force on Prescription Drug Abuse

S.L. 2010-152, Part XXXIII (SB 900, Part XXXIII) establishes the Legislative Task Force on Prescription Drug Abuse and authorizes the Task Force to study the following issues:

- Whether to expand access to the Controlled Substances Reporting System (CSRS) to physician employees and additional types of law enforcement officers.
- Whether to require a photo ID when picking up prescriptions that are considered controlled substances
- Whether physician education and relicensure needs to include more training on decreasing substance abuse of prescription drugs.
- Any other matter the Task Force feels would be helpful in reducing prescription drug abuse.

The act authorizes the Task Force to make a final report, including any proposed legislation, to the 2011 General Assembly upon its convening and provides for the termination of the Task Force upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

This part became effective July 22, 2010. (BP)

Chapter 13
Insurance

Kory Goldsmith (KG), Tim Hovis (TH), Brad Krehely (BK), Shawn Parker (SP),
William Patterson (WP), Ben Popkin (BP)

Enacted Legislation

Appropriations Act of 2010

Department of Insurance Health Reform Authority and Positions

S.L. 2010-31, Sec. 24.2 (SB 897, Sec. 24.2) authorizes the Commissioner of Insurance to administer and enforce the provisions of the federal Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 to the extent those acts apply to persons subject to the Commissioner's jurisdiction and are not under the exclusive jurisdiction of any federal agency.

The Department of Insurance is directed to apply for available federal funds to support 13 positions within the Department listed in this section and report to the Joint Legislative Commission on Governmental Operations by September 1, 2010, on the results of those efforts. If the Department is unable to obtain federal funding, then, after consultation with the Commission, this section appropriates $1,150,693 for the 2010-2011 fiscal year from the Office of State Budget and Management-Special Appropriations to the Department to fund the positions and implement the provisions of this section.

This section became effective July 1, 2010. (TH)

Authorize State High Risk Pool to Administer Federal High Risk Pool

S.L. 2010-31, Sec. 24.3 (SB 897, Sec. 24.3) authorizes the North Carolina Health Insurance Risk Pool to enter into contracts with the United States Department of Health and Human Services to administer the federal high risk health insurance pool established by the Patient Protection and Affordable Care Act (Public Law 111-148), as amended.

This section became effective July 1, 2010. (BP)

State Health Plan

Insurance and State Health Plan Cover/Hearing Aids/Autism

S.L. 2010-2 (HB 589) requires every health benefit plan, including the State Health Plan, to provide coverage for individuals under the age of 22 for one hearing aid per hearing-impaired ear, up to a cost of $2,500 per hearing aid every 36 months. Coverage must include all medically necessary hearing aids and services ordered by an audiologist, including services and supplies, and an initial hearing aid evaluation, fitting and adjustments. New hearing aids must be provided when alterations to an existing hearing aid is inadequate.

This act becomes effective January 1, 2011, and applies to health benefit plans that are delivered, issued for delivery, or renewed on and after that date. (WP)

State Health Plan/Age-Out Dependents; Tobacco Use Testing

S.L. 2010-3 (HB 1707) allows dependent children enrolled in the North Carolina State Health Plan for Teachers and State Employees (State Health Plan) as of May 1, 2010, and not eligible for other employer sponsored health benefit coverage as a primary beneficiary or spousal dependent, to remain enrolled in the State Health Plan through the end of the month following their 26th birthday. This provision of the act became effective June 1, 2010, and is repealed effective July 1, 2011.

The act also directs the Executive Administrator of the State Health Plan to consult with the Committee on Employee and Hospital Medical Benefits before implementing an enrollee tobacco usage verification program. This provision of the act became effective June 7, 2010. (BP)

Clarifying Changes to the General Statutes/Authorize Hearing Aid Fitters

S.L. 2010-97, Sec. 7 (SB 1242, Sec. 7) amends G.S. 58-3-285(a), to provide that only individuals authorized by law to fit hearing aids, including persons licensed under Chapter 93D of the General Statutes, are eligible to fit a hearing aid under this section, which requires coverage for hearing aids by health benefit plans. This section became effective July 10, 2010. (SP)

State Health Plan/Court-Ordered Guardianships

S.L. 2010-120 (SB 1392) amends the definition of "dependent child" to include a child for whom an employee is a court-appointed guardian, so long as the employee also is legally responsible for the child's maintenance and support. This change allows an employee the option of providing State Health Plan insurance coverage for a child for whom the employee is a court-appointed guardian.

This act became effective July 1, 2010. (TH)

State Health Plan/Treat Teachers Equitably

S.L. 2010-136 (SB 1251) amends G.S. 135-45.2(a)(8), to:

- Allow teachers who have completed a 10 or 11 month contract term for employment by a local school administrative unit to continue coverage under the State Health Plan on a noncontributory basis if their job is eliminated because of a reduction in funds used to support the job. This provision became effective May 1, 2010.
- Provide that an employee's eligibility to continue State Health Plan coverage under this subdivision is lost if a subsequent employer provides the employee with health benefit coverage on a non-contributory basis. This provision became effective on July 21, 2010. (WP)

Miscellaneous

Annuity Insolvency Coverage/Insurance Guaranty Association

S.L. 2010-11 (HB 766) amends the coverage provided by the North Carolina Health and Life Insurance Guaranty Association as follows:

- For insolvencies involving issuers of structured settlement annuities, the act makes a technical correction by rewording the $1 million coverage limit in G.S. 58-62-21(d)(5) so that it applies on a "per payee" basis rather than on the previous "per contract holder" basis.
- For insolvencies involving issuers of all other types of annuities, the act deletes the aggregate limit on coverage under G.S. 58-62-21(e), which otherwise would apply to individuals who are holders of annuities issued by more than one insolvent insurer. With this change, such individuals will remain subject to the $300,000 coverage limit per insolvency under G.S. 58-62-21(d)(2), but will not be subject to an aggregate lifetime coverage limit.

This act became effective June 23, 2010, and applies to claims submitted to the North Carolina Life and Health Insurance Guaranty Association on or after August 7, 2009. (WP)

Pyrotechnics Operator's License

S.L. 2010-22 (SB 992) amends the law governing pyrotechnics training and permitting to provide that no person may obtain a pyrotechnics permit from a city or county unless the person possesses an appropriate license, issued by the Commissioner of Insurance.

The act authorizes the following three kinds of licenses:

- A display operator license, which replaces the permit authorized under prior law. To qualify for this license, an individual must be at least 21 years old, and must have assisted a licensed display operator as an assistant display operator for authorized displays at least three times or be a proximate display operator, completed the minimum training required, and passed an examination approved by the State Fire Marshal or have current certification by a third party acceptable to the State Fire Marshal.
- A proximate audience display operator license, which applies to an individual who displays pyrotechnics that occur within a building or structure or that occur outside before an audience within 75 feet of the pyrotechnics. To qualify for this license, an individual must be at least 21 years of age, and must have completed the training program, successfully passed an examination approved by the Commissioner, and participated as a display operator or an assistant display operator under the direct supervision of a display operator on at least three displays.
- An assistant display operator license, which applies to any person who assists a display operator or a proximate audience display operator. To qualify for this license, an individual must be at least 18 years of age, and must sign a statement that the individual has read and understands the safety guidelines.

Applicants for all three licenses must have no violations of this or any other state's similar laws, and must submit a letter of clearance from the federal Bureau of Alcohol, Tobacco, and Firearms, or sign a statement that the operator has not been convicted of illegally transporting or possessing explosives under federal law.

The act authorizes a nonrefundable license fee of $100 for each application for a display operator license or a proximate audience display operator license, and a $30 fee for each application for an assistant display operator license. There also is a $60 renewal fee for a display operator's license and a proximate audience operator's license, respectively, and a $30 renewal fee for an assistant display operator's license. The nonrefundable examination fee for all three categories of license is $10.

The act defines an event employee as a person who assists a display operator but does not handle pyrotechnic materials. The Commissioner or a local fire code official may certify an individual as an event employee if the person is at least 18 years of age, has a valid driver's license or other state issued identification, passes an on-site test of five basic pyrotechnic questions, and provides written confirmation from a display operator that the event employee is

working under the display operator's supervision and will not handle pyrotechnic material. The event employee certification is valid only for the listed event and cannot be renewed.

The Commissioner is authorized to deny, suspend, revoke, or refuse to renew any license for any one of a number of listed prohibited activities.

The act authorizes the Commissioner to issue a temporary display operator license to an individual who is at least 21 years of age, has completed a minimum of six permitted displays in North Carolina in the past ten years, and pays a $25 fee. The temporary license can be issued to a person only one time and is valid for 30 days. The temporary licensee must take the exam and complete the training by September 30, 2010, or within 60 days after the effective date of this act. A person who fails to comply with the act cannot apply for a license until after September 30, 2011. No temporary license may be issued after July 31, 2010.

The provisions of the act pertaining to issuance of a temporary display operator license became effective June 25, 2010. The remainder of the provisions become effective October 1, 2010. (TH)

Mortgage Guaranty Insurer Sunset Extended

S.L. 2010-40 (HB 1429) extends the authority of the Commissioner of Insurance (Commissioner) to waive certain minimum capital and asset requirements for a mortgage guaranty insurers.

Under existing law, a mortgage guaranty insurer must maintain at all times a minimum policyholder's position of not less than one twenty-fifth of the insurer's aggregate insured risk outstanding. However, the Commissioner may waive this requirement at the written request of a mortgage guaranty insurer upon a finding that the insurer's policyholder's position is reasonable in relationship to the insurer's aggregate insured risk and adequate to its financial needs. The Commissioner's authority to grant a waiver was set to expire July 1, 2011. This act extends that authority to July 1, 2015.

This act became effective July 1, 2010. (KG)

Implement Long-Term Care Partnership Program

S.L. 2010-68 (SB 1193). See **Health and Human Services**

Fire Safe Cigarettes

S.L. 2010-101 (HB 1905) amends the contents of the written certification form submitted by cigarette manufacturers under the Fire-Safety Standard and Firefighter Protection Act to include "brand style" as part of the description of each cigarette listed in the certification and to require payment of a $250 fee for each brand style listed. The act defines brand style as a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

This act became effective July 1, 2010. (SP)

No Set Fee/Noncovered Dental Services

S.L. 2010-138 (HB 144) prohibits fee limitations in agreements between a dentist and an insurer or between a dentist and an entity that writes stand alone dental insurance for the provision of dental services on a preferred or in-network basis, unless the service in question is a "covered service" under the contract. A covered service is defined as services for which reimbursement is available under an insurer's policy, without regard to contractual limitations by a deductible, co-payment, or other limitation. The prohibition on this sort of agreement also applies to dental service corporations.

This act became effective July 21, 2010, and applies to contracts between dentists and health benefit plans or insurers delivered, amended, or renewed on or after that date. (KG)

Studies

Legislative Research Commission (LRC)

Study Liability Insurance for Long-Term Care Facilities

S.L. 2010-152, Sec. 2.14 (SB 900, Sec. 2.14). See **Health and Human Services.**

Study Insurance Coverage Options for Fresh Produce Growers

S.L. 2010-152, Sec. 2.15 (SB 900, Sec. 2.15) authorizes the LRC to study the issue of adequate insurance coverage options for fresh produce growers.

This section became effective July 22, 2010. (BK)

Chapter 14
Local Government

Howard Alan Pell (HAP), Giles S. Perry (GSP)

Enacted Legislation

Electronic Payments by Local Governments

S.L. 2010-99 (HB 666) authorizes local governments or public authorities to pay obligations with the following additional methods of payment: (1) electronic payment, defined as "payment by charge card, credit card, debit card, or by electronic funds transfer"; or (2) electronic funds transfer, defined as "a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account." The finance officer or duly appointed finance officer must perform the pre-audit process, as required by law, and so indicate on the execution of the payment.

This act became effective July 1, 2010. (HAP)

Remove Sunset/Private Sale Local Government Bonds

S.L. 2010-125 (HB 1936) removes the December 31, 2010, sunset on the authorization for private sale of general obligation bonds issued under the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" or are unrated.

This act became effective July 21, 2010. (GSP)

Water Supply System Capacity Planning

S.L. 2010-150 (HB 1747). See **Environment and Natural Resources.**

Use of 911 Funds

S.L. 2010-158 (HB 1691). See **Utilities.**

Local Government Other Post-Employment Benefits

S.L. 2010-175 (SB 1212) modifies the Local Government Other Post-Employment Benefits Fund, which allows local governments to invest monies set aside to fund post-employment benefits in equity securities through the State Treasurer, so that the financial disclosure obligations of the Fund remain with the local government.

This act became effective July 1, 2010. (GSP)

Land Development Permit Extensions

S.L. 2010-177 (HB 683). See **Environment and Natural Resources.**

Highway Patrol Motor Carrier Fines/Local Fees

S.L. 2010-129 (SB 1214). See **Transportation.**

Chapter 15
Military, Veterans', and Indian Affairs

Bill Gilkeson (BG), Howard Alan Pell (HAP)

Enacted Legislation

Military Wartime Veteran Special Plate Change

S.L. 2010-39 (HB 1143). See **Transportation**.

No Foreclosure/Soldiers on Active Duty/Funds

S.L. 2010-190 (SB 1400). See **Commerce**.

Honor Wishes of Members of Military/Remains

S.L. 2010-191 (HB 76) allows a service member to designate the disposition of his or her remains through forms required by military service. It allows a person to delegate the authority to dispose of his or her remains pursuant to a health care power of attorney, a method not previously authorized for the purpose. The act also adds a statutory section adopting the "Honor and Remember Flag" as a symbol to honor and recognize members of the U.S. Armed Forces who have died in the line of duty.

This act became effective August 4, 2010. (BG)

Absentee Voting Changes

S.L. 2010-192 (HB 614). See **Constitution and Elections**.

Courts-Martial Amendments

S.L. 2010-193 (HB 1412) amends the military justice code, provided in State statutes, applicable to members of the North Carolina National Guard while on State active duty. While on federal active duty, the Uniform Code of Military Justice (UCMJ) is applicable to all members of the Armed Forces, active and reserve. Violations of the UCMJ are punishable by court-martial. The Manual for Courts-Martial (MCM) provides rules for how a defendant is charged, how the charges are processed, details the defendant's rights, and provides evidentiary rules and procedures for the authorized types of courts-martial (summary, special, general). The MCM provides procedures and rules that are comparable to those provided in the State criminal procedure laws in Chapter 15A of the General Statutes, including the authorized punishments.

- Courts-martial. – The act provides that courts-martial follow the same general rules and regulations as are provided in the UCMJ and the MCM, except as provided in the State statutes. A service member receiving nonjudicial punishment under Article 15 of the UCMJ cannot opt for a court-martial at any level in lieu of the nonjudicial punishment.
  - General Court-martial. – No sentence to confinement can be imposed unless there was a panel (jury) of at least five members (unless the defendant waived a panel), and no sentence to confinement may exceed one year and one day.

- Special Court-martial. – No sentence to confinement can be imposed unless there was a panel (jury) of at least three members (unless the defendant waived a panel), and no sentence to confinement may exceed six months.
- Summary Court-martial. – A single commissioned officer presides at a summary court-martial, without a panel, and the defendant has no right to counsel. No confinement is authorized. Otherwise, the punishments are the same as provided in the MCM. There is no right to object to a summary court-martial.

➢ Military Judge. – The minimum requirements for appointment as a military judge are set forth. Certified judges in the Coast Guard are added to those who may be appointed.

➢ Pretrial Confinement and Sentences. – The act provides for the rules for pretrial confinement and how sentences are to be executed.
- A defendant may be confined in a local jail until a bail determination [utilizing existing State law] is made. If the defendant is not released pending trial, he or she must be transferred to the Wake County Jail pending the court-martial (which would be held in Wake County.)
- If a defendant is sentenced to confinement by the court-martial, the Department of Correction will have custody of the prisoner. The prisoner may be transferred to a local confinement facility to serve the sentence.
- The Department of Crime Control and Public Safety is required to bear all costs of transportation and confinement, by reimbursement, to the providing agency.
- A local or State law enforcement officer is authorized to serve warrants or other processes, and any costs are the responsibility of the Department of Crime Control and Public Safety.
- The military judge, president of the court-martial, or a summary court officer is required to prepare and sign a certificate containing the name of the accused, the date and place of trial, and the date of approval of sentence. The trial counsel (prosecutor) is responsible for delivering the certificate to the clerk of the superior court in the county where the court-martial was held. The clerk is required to take necessary actions to carry out the sentence as in other State cases. The Administrative Office of the Courts must insure that the conviction is recorded in the same way a criminal offense in the State courts would be recorded.

➢ Appellate Review. – The act establishes a system of appellate review for courts-martial. There had been no review of courts-martial by civilian courts under previous law.
- A defendant sentenced to confinement may appeal directly to the Superior Court in Wake County. Confinement will be served unless the defendant is allowed release on bail under the State statute applicable to criminal appeals. The section provides the time, method, and fee for filing the appeal.
- Errors not asserted are waived. Applicable military law is used by the court.
- The Chief Justice of the North Carolina Supreme Court appoints a Superior Court judge to hear the appeal at a designated Session of the Superior Court.
- The court may set aside the findings or sentence, or modify them in whole or in part. If the findings are set aside based on insufficient evidence, then the charges must be dismissed.
- The court may order a rehearing on the charges, or other hearings as the court deems are necessary – including evidentiary hearings. The hearings would be by military judge alone.
- The Staff Judge Advocate of the North Carolina National Guard appoints government appellate counsel and defense appellate counsel. The counsel may not be the same counsel who represented the defendant at the court-martial.

- If the defendant claims ineffective assistance of counsel, he or she waives the attorney-client privilege with prior counsel, to the extent necessary for the trial defense counsel to respond. This is the same rule applicable to other criminal appeals.
- The North Carolina Court of Appeals has discretionary review of cases heard in the Superior Court. There is no review by the North Carolina Supreme Court; a decision by the North Carolina Court of Appeals is final.

This act becomes effective December 1, 2010, and applies to offenses committed on or after that date. The requirement that courts-martial criminal history records be electronically recorded becomes effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts; paper copies are to be kept on file in the Wake County Courthouse until that time. (HP)

Legislative Research Commission (LRC)

Study Use of Military Veteran Contractors

S.L. 2010-152, Sec. 2.13 (SB 900, Sec. 2.13) authorizes the LRC to study methods to encourage State and local governments to use contractors who are military veterans.

This section became effective July 22, 2010. (BG)

Chapter 16
Occupational Boards and Licensing

Karen Cochrane-Brown (KCB), Jennifer Mundt (JM), Shawn Parker (SP)

(For summaries of legislation related to non-occupational boards and commissions, see Chapter 20, **State Government.**)

Enacted Legislation

Amend On-Site Wastewater Certification

S.L. 2010-31, Secs. 13.2(e) through 13.2(o) (SB 897, Secs. 13.2(e) through 13.2(o)) amends the statutes governing certification of on-site wastewater contractors and inspectors (Article 5 of Chapter 90A of the General Statutes) as follows:

- Amends the definition of "inspector" and adds definitions for the terms "inspection" as it pertains to inspections of permitted on-site wastewater systems and "wastewater treatment facility."
- Clarifies the applicability of the Article.
- Repeals the provisions that (i) require members of the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board take and file an oath with the Secretary of State to perform the duties of the Board and (ii) allow dual office holding.
- Repeals the statutes establishing the On-Site Wastewater Certification Fund and provides that all fees collected pursuant to the Article must be held by the Board and used by the Board for the sole purpose of administering the Article.
- Amends applicant certification qualifications.
- Provides that the Board, rather than the Attorney General, may, in its own name, seek an injunction to restrain a person from violating the provisions of the Article or any rules adopted by the Board.

These sections became effective July 1, 2010. (JM)

Age Requirements for Licensure

S.L. 2010-97, Sec. 8 (SB 1242, Sec. 8) provides the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission may require that an individual be more than 18 years of age as a condition for licensure by either of the Commissions.

This section became effective July 20, 2010. (SP)

Increase Licensure Fees/Athletic Trainers

S.L. 2010-98 (SB 1210) authorizes the North Carolina Board of Athletic Trainer Examiners to increase fees charged for licensure issuance (up to $200), renewal (up to $75), and reinstatement (up to $100).

This act became effective July 20, 2010. (SP)

Modernization of the State ABC System

S.L. 2010-122 (HB 1717). See **Alcoholic Beverage Control.**

Regulation of Appraisal Management Companies

S.L. 2010-141 (SB 829) creates a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. The act requires that beginning January 1, 2011, any person or business entity that acts as an appraisal management company must register with the North Carolina Appraisal Board. An appraisal management company is defined as any business entity that utilizes an appraisal panel and performs appraisal management services. An appraisal panel is a network of licensed or certified appraisers who are independent contractors to the appraisal management company. The definition of an appraisal management company does not include any government agency, an appraiser who enters into an agreement with another appraiser to perform an appraisal and the completed appraisal report is signed by both appraisers, any chartered financial institution, a real estate broker, an officer or employee of an exempt entity acting within the scope of employment, or an attorney or personal representative who orders an appraisal on behalf of a client. The Appraisal Board is authorized to adopt rules to implement the act and to determine the qualifications of applicants for registration. Appraisal management companies must pay fees to an appraiser within 30 days of receiving the appraisal, unless the appraisal does not comply with the conditions of the engagement. In such case, the appraiser must be notified in writing that the fees will not be paid.

Each appraisal management company must designate and identify to the Board a compliance manager who is a certified real estate appraiser under the laws of North Carolina or the comparable laws of another state.

The Appraisal Board is authorized to establish a registration fee, not to exceed $3,500, and a renewal fee, not to exceed $2,000. In addition, the Board is authorized to charge the following fees:

- Late fee $20/month up to $120.
- Replacement fee $50.
- Registration history $100.

The Board has authority to deny, suspend, revoke, or refuse to issue or renew a registration, or restrict or limit activities of a person who owns or participates in the business if it finds that the company or any of its principals or employees has violated any of the provisions of the act. The Board also may impose a civil penalty not to exceed $10,000 for any violation of the act and to impose a penalty of up to $25,000 for failure to comply with an order to cease from a prohibited action. Any person violating the act shall be guilty of a Class 1 misdemeanor. The Board also may seek injunctive relief.

The act also amends the law which creates the North Carolina Appraisal Board and designates the appointment of its members. The act directs the Governor to use one of five appointments to appoint a person either representing the appraisal management industry or the banking industry.

The provision authorizing the Appraisal Board to adopt rules to implement the act became effective July 22, 2010. The remainder of the act becomes effective January 1. 2011. (KCB)

Studies

Legislative Research Commission (LRC)

Flexibility for Certified Nurse Midwives

S.L. 2010-152, Sec. 2.4 (SB 900, Sec. 2.4) authorizes the LRC to study whether certified nurse midwives should be given more flexibility in the practice of midwifery. If the LRC undertakes the study, it may consider whether a certified nurse midwife should be allowed to practice midwifery in collaboration with, rather than under the supervision of, a physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes who is actively engaged in the practice of obstetrics.

This section became effective July 20, 2010. (SP)

State Boards and Commissions

S.L. 2010-152, Sec. 2.18 (SB 900, Sec. 2.18) authorizes the LRC to study consolidation or elimination of State Boards and Commissions.

This section became effective July 10, 2010. (SP)

Referrals to Departments, Agencies, Etc.

Consumer Guidelines for Hearing Aid Purchases

S.L. 2010-121 (HB 1705). See **Health and Human Services**.

Chapter 17
Property, Trusts, and Estates

Cindy Avrette (CA), Bill Gilkeson (BG), Kory Goldsmith (KG),
Brad Krehely (BK), Jennifer McGinnis (JLM)

Enacted Legislation

Reconveyance Fees Prohibited

S.L. 2010-32 (SB 35) prohibits transfer fee covenants. A transfer fee covenant runs with the title to real property and requires the payment of a fee when the property is transferred in the future.

The act provides any transfer fee covenant recorded after the effective date of the act is not binding or enforceable against subsequent owners of the property. Any person who records a transfer fee covenant is liable for any damages, fees, and costs associated with imposition of the transfer fee. However, the act specifically excludes from the prohibition real estate broker fees, homeowners' association fees, fees traditionally associated with real estate closings, and taxes payable to a governmental authority.

This act became effective June 24, 2010, and applies to: (i) any transfer fee covenant recorded after the effective date of this act; (ii) any lien that is filed to enforce a transfer fee covenant recorded after the effective date of this act or purports to secure payment of a transfer fee recorded after the effective date of this act; and (iii) any agreement imposing a private transfer fee obligation entered into after the effective date of this act. (BG)

Clarifying Changes to the Trust Laws

S.L. 2010-97, Secs. 5(a) and 5(b) (SB 1242, Secs. 5(a) and 5(b)) make the following clarifying changes to the statutes dealing with trusts:

- Clarify that a court may create or establish a trust by judgment or decree. In the Omnibus Budget Reconciliation Act of 1993, Congress provided that certain kinds of special needs trusts (OBRA '93 trusts) may contain assets attributable to a person with a disability without disqualifying the person for benefits under the Medicaid program. To prevent windfalls to beneficiaries of a person with a disability who may not be disabled and to protect funds in the Medicaid program, amounts remaining in OBRA '93 trusts at death are recoverable by the State, as provided in federal law.
- Clarify that if a trustee can distribute first trust principal or income to a second trust, then the standards applicable to the distribution of the property from the first trust are applicable to the second trust. Therefore, only the first trust beneficiaries could receive distributions from the second trust using the same standards contained in the first trust.

These sections became effective July 20, 2010. (BK)

Carbon Monoxide Detector in Rental Property Law

S.L. 2010-97, Sec. 6 (SB 1242, Sec. 6) modifies provisions in the Landlord-Tenant Law and the State Building Code that require the landlord or builder to provide at least one operable carbon monoxide detector per rental unit per level in dwelling units. The change clarifies that the

provisions apply only to dwelling units having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached garage.

This section became effective July 20, 2010. (JLM)

Construction of Wills and Trusts

S.L. 2010-126 (SB 1176) addresses the confusion and ambiguity in formula clauses caused by the repeal of the federal estate tax law for 2010, by interpreting the wills and trusts of individuals who die in 2010 as if the individual had died on December 31, 2009. It also addresses instruments executed by a person who died before 2010 but left a document with formula language that takes effect in 2010. The act provides that a will or codicil, or trust instrument or amendment to a trust instrument, that refers to federal estate and generation-skipping transfer tax laws and becomes applicable during the time in which no such laws exist, will be construed to refer to the federal estate and generation-skipping transfer tax laws as they existed on December 31, 2009, unless the document clearly manifests an intent that a contrary rule applies. At least nine other states have adopted similar construction provisions.

This act became effective July 21, 2010. (CA)

Will/Uniform Principal and Income Act Changes

S.L. 2010-181 (HB 620) repeals certain provisions related to wills and amends certain provisions related to trusts.

Regarding wills, the act repeals G.S. 31-4.1 which prohibited an attorney from drafting a will that makes the attorney a beneficiary under the will unless the attorney is related to the testator and required an attorney to attach an affidavit to the will certifying the attorney had not violated the prohibition. Attorneys will continue to be prohibited from engaging in drafting this type of instrument under Rule 1.8(c) of the North Carolina State Bar Rules of Professional Conduct. The act also repeals G.S. 31-4.2 which required an attorney who drafted the will to include the attorney's name and business address on the will.

Regarding trusts, the act amends G.S. 37A-4-409 to make it consistent with recent Internal Revenue Service rulings to ensure that North Carolina's law does not invalidate the marital deduction for a spousal trust. It also amends G.S. 37A-5-505 to allow a trustee to pay income taxes from principal when the tax exceeds the total receipts to a trust.

The provisions related to wills became effective July 1, 2010, but no will or codicil would be invalid due to the lack of an affidavit or the disclosure of the drafting attorney's name and business address. The provisions related to trusts become effective January 1, 2011. (KG)

Chapter 18
Resolutions

Denise Huntley Adams (DHA)

Joint Resolutions

Adjournment Technical Corrections

Res. 2010-1 (SB 1110).

Honor Jimmie Johnson

Res. 2010-2 (HB 1675).

Honoring North Carolina Veterans on Memorial Day

Res. 2010-3 (SB 1390).

Honoring North Carolina Veterans on Memorial Day

Res. 2010-4 (HB 1940).

Honor Bob Hensley

Res. 2010-5 (HB 1678).

Pitt County's 250th Anniversary

Res. 2010-6 (HB 1722).

Honor Randolph County Honor Guard

Res. 2010-7 (HB 1869).

Honor Christopher Duffy Collins

Res. 2010-8 (SB 1096).

Honor Arthur W. Williamson

Res. 2010-9 (SB 1300).

Honor Tryon's 125th Anniversary

Res. 2010-10 (HB 1789).

Little Switzerland Centennial

Res. 2010-11 (HB 2051).

Joint Session to Honor Blue Devils

Res. 2010-12 (SB 1455).

Honor Hoyt Taylor, Sr. and Hoyt Taylor, Jr.

Res. 2010-13 (HB 2074).

Honor Myrna Miller

Res. 2010-14 (HB 2071).

Confirm Lucy Allen

Res. 2010-15 (HB 1907).

Honor Duke Basketball Team

Res. 2010-16 (SB 1456).

Honor W. Horace Carter

Res. 2010-17 (SB 1301).

Honor Mickey Hutchens

Res. 2010-18 (HB 1900).

Honor New Bern's 300th Anniversary

Res. 2010-19 (HB 2077).

Honor Betty Wiser

Res. 2010-20 (SB 1454).

Honor Margaret Taylor Harper

Res. 2010-21 (SB 1302).

Caswell County Heritage Month

Res. 2010-22 (SB 1391).

Honor Americans with Disabilities Act 20th Anniversary

Res. 2010-23 (HB 2076).

Honoring 100th Anniversary of Scouting

Res. 2010-24 (HB 2078).

Honor James Turner

Res. 2010-25 (SB 1460).

Honor Jimmy Reese Lowry

Res. 2010-26 (HB 2080).

Albemarle Electric System's 100th Anniversary

Res. 2010-27 (HB 2081).

Honor North Carolina Central University's 100th Anniversary

Res. 2010-28 (HB 1407).

Recognize YMCA Camping

Res. 2010-29 (HB 2082).

Honor John Forlines, Jr.

Res. 2010-30 (SB 1463).

Sine Die Adjournment

Res. 2010-31 (SB 1462).

Chapter 19
Retirement

Karen Cochrane-Brown (KCB), Theresa Matula (TM)

Enacted Legislation

Reciprocity for Optional Retirement Program Service

S.L. 2010-38 (HB 1998) allows service credit of a member of the Optional Retirement Program to be added to the creditable service standing to the credit of a member of the Teachers' and State Employees' Retirement System on the same basis as is provided for the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System. The act further provides that in no instance will service credits in the Optional Retirement Program be added to the creditable service in the Teachers' and State Employees' Retirement System for application of the System's benefit accrual rate in computing a service retirement benefit unless otherwise authorized.

This act became effective July 1, 2010. (KCB)

Retirement Technical Corrections

S.L. 2010-72 (HB 2054) makes technical and clarifying changes to the laws governing the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System, including:

- Amends the law authorizing members of the State or Local System to elect to receive an optional reduced retirement allowance in order to provide a survivor's benefit to a beneficiary upon the death of the retiree; clarifies that a member may not change the option or the designated beneficiary after the member has cashed the first retirement check or after the 25th day of the month following the month the first check was mailed, whichever comes first; allows a member who has elected Option 5 to change the option or the designated beneficiary, if the spouse predeceases the member and the member remarries, or if the member divorces; clarifies that only one person can be eligible to receive a refund of accumulated contributions when a member dies after the effective date of retirement but before receipt of the option election form.
- Clarifies the law governing the Survivor's Alternate Benefit by providing that the benefit is payable only if all four of the listed requirements are met, including that at the time of the member's death there is only one beneficiary eligible to receive the accumulated contributions, and that the member had not yet begun to receive a retirement allowance.
- Clarifies that a former employee who has been approved for long-term disability but is not yet receiving benefits because the member is receiving a payout for vacation and bonus leave, is covered by the State Health Plan; clarifies that former employee must have at least five years of contributory retirement service with an employing unit of a State supported retirement system in order to be eligible for coverage under the health plan; and allows a member who is on extended short-term disability to be eligible for the Death Benefit.
- Allows a retiree who has returned to service to elect to receive a refund of contributions paid during the period of reemployment when the retiree terminates employment.

- Provides an elected official who is convicted of a listed crime does not forfeit a return of member contributions plus interest.
- Extends the period after which a member's failure to respond to a preliminary option calculation will void the option election from 90 to 120 days after the mailing of the option election form or the effective date of retirement, whichever is later.
- Provides when Social Security disability benefits are increased by cost-of-living adjustments, the increased reduction of benefits under the Disability Income Plan will be applied in the first month following the month in which the member becomes entitled to the increased Social Security benefit.
- Allows retroactive adjustment in the reporting of compensation when a member is awarded back pay in a case of wrongful demotion.
- Provides upon the death of a retiree receiving a Special Retirement Allowance is created by transferring a member's 401(k) contributions to the Retirement System, the member's designated beneficiary is eligible for an additional death benefit equal to the excess of employee contributions to the 401(k) plan over the total Special Retirement Allowance paid prior to the retiree's death.
- Allows a law enforcement officer to transfer a portion of the officer's accumulated contributions in the 401(k) plan to the Retirement System, rather than all or none.

This act became effective July 1, 2010. (KCB)

Special Retirement Allowances

S.L. 2010-124 (HB 2066) authorizes the creation of special retirement allowances for all members of both the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System. The members would be allowed to make a one-time transfer of any portion of a member's eligible accumulated contributions (excluding Roth after-tax contributions) from the Supplemental Retirement Income Plan or the Public Employees Deferred Compensation Plan to the appropriate retirement system. However, the Board of Trustees is authorized to establish a minimum amount that must be transferred. The member could make the election at or at any time following retirement. The member would then be eligible to receive a special retirement allowance similar to what is currently available to law enforcement officers. The Supplemental Retirement Board of Trustees is authorized to assess a one-time administrative fee, not to exceed the actual cost of the administrative expenses related to the transfer.

The act also authorizes law enforcement officers who are vested on June 30, 2010, to transfer a portion of their accumulated contributions rather than the entire balance.

This act becomes effective January 1, 2011. Any beneficiary who retired prior to January 1, 2011, will not be allowed to make the one-time election until July 1, 2011. Any administrative fees assessed by the Board of Trustees may be used to hire additional personnel to administer the act. (KCB)

Chapter 20
State Government

Denise Huntley Adams (DHA), Erika Churchill (EC), Karen Cochrane-Brown (KCB),
Kory Goldsmith (KG), Theresa Matula (TM), Howard Alan Pell (HAP),
Ben Popkin (BP), Barbara Riley (BR)

Enacted Legislation

Colonial Spanish Mustang as State Horse

S.L. 2010-6 (HB 1251) amends Chapter 145 of the General Statutes to adopt the Colonial Spanish Mustang as the official horse of North Carolina.

This act became effective June 7, 2010. (BR)

Reciprocity for Optional Retirement Program Service

S.L. 2010-38 (HB 1998). See **Retirement**.

Confidentiality of Aging Reports

S.L. 2010-97, Sec. 10 (SB 1242, Sec. 10) permits clerks of court and other public offices to treat "aging reports" relating to escheated and abandoned property as confidential. Lists of apparent owners of escheated and abandoned property and supporting data are currently treated as confidential. This section also increases from 6 months to 12 months the amount of time allowed for supporting data and lists of apparent owners of escheated property held by the Treasurer may be treated as confidential.

This section became effective July 20, 2010. (DHA)

Name Change for NC-Think

S.L. 2010-97, Sec. 11 (SB 1242, Sec. 11) changes the name of the State Employee Incentive Bonus Program to the State Employee Suggestion Program, known as NC-Thinks. This section also changes the name of the Incentive Bonus Review Committee to the State Suggestion Review Committee.

This section became effective July 20, 2010. (DHA)

Voluntary Shared Leave Nonfamily Sick Leave Donations

S.L. 2010-139 (HB 213) allows State employees and public school employees to transfer up to five days of sick leave per year to an employee who is a nonfamily member. The act directs the State Personnel Commission and the State Board of Education to adopt rules and policies for the voluntary shared leave program to allow an employee to donate sick leave to a nonfamily member employee under the following conditions:

- The donor of the sick leave may not donate more than five days of sick leave to any one nonfamily member recipient.
- The combined total of sick leave donated to a recipient from nonfamily member donors may not exceed 20 days per year.
- Donated sick leave may not be used for retirement purposes.

- Employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave.

The act also requires the State Personnel Commission, the State Board of Education, and the State Board of Community Colleges to report annually on the voluntary shared leave program to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on or before October 15 of each year. The report must include (for the prior fiscal year) the total number of days or hours of vacation leave and sick leave donated and used by voluntary shared leave recipients and the total cost of the vacation leave and sick leave donated and used.

This act becomes effective January 1, 2011. (TM)

Performance and Payment Bond Modification

S.L. 2010-148 (HB 1035) increases the threshold for when a performance or payment bond is required on construction contracts let by State agencies, departments, and The University of North Carolina. The threshold is increased from $300,000 to $500,000. All other existing requirements related to the bonds remain applicable.

This act becomes effective October 1, 2010, and applies to contracts awarded on or after that date. (EC)

Government Ethics and Campaign Reform Act of 2010

S.L. 2010-169 (HB 961). See **Constitution and Elections.**

Retiring of State Flags

S.L. 2010-189 (SB 866) provides that an official State flag no longer a fitting emblem for display because it is worn, tattered, or otherwise damaged may be respectfully retired by fire. The act is consistent with federal law on the retirement of the United States flag.

This act became effective August 3, 2010. (HAP)

Amend State Purchases and Contracts Laws

S.L. 2010-194 (SB 1213) makes numerous changes to the law regarding the content of State contracts, and requires that contracts let by certain agencies be reviewed by an attorney on behalf of the State.

The act requires various State agencies, departments, commissions, boards, and authorities (listed below) to: (i) submit proposed statewide or agency term agreements or contracts over $1 million to the Attorney General or the Attorney General's designee for review; and (ii) include a standard clause in all agreements or contracts to be awarded which provides that the State Auditor and internal auditors of the relevant entity may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. These provisions apply to the following:

- State Lottery Commission.
- Commissioner of Banks (supervisory contracts, conservator contracts).
- Commissioner of Insurance (various service contracts).
- Global Transpark Authority (special user and airport projects).
- State Bar Council.
- Board for Licensing of Geologists.
- Board for Licensing of Soil Scientists.
- Department of Health and Human Services (Medical Assistance program (Medicaid) for fiscal intermediary, capitation, or prepaid health services contracts).

- Applied Textile Technology Center.
- Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees.
- North Carolina Turnpike Authority.
- Departments of Transportation and Correction (road construction by employees and/or inmates).
- North Carolina Code Officials Qualification Board (course development and administration).
- Roanoke Island Commission.
- State Auditor (system security assessment).

The act prohibits the entities listed above, except the State Lottery Commission, from awarding a cost plus percentage of cost agreement or contract for any purpose. It requires all State entities, except The University of North Carolina (UNC), to submit for review all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed $1 million. The Attorney General or a designee (or in the case of a UNC constituent institution, that institution's General Counsel) must review all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed $1 million to ensure that proposed contracts are in proper legal form, contain all clauses required by law, are legally enforceable, and accomplish the intended purposes of the proposed contract. Finally, the act expands existing responsibilities of the Attorney General to assist the Secretary of Administration with contracting responsibilities and requires the Secretary of Administration to, among other things, include specific provisions in all contracts, monitor all Statewide term contracts, and develop rules to implement the recent statutory changes.

This act becomes effective October 1, 2010, and applies to all contracts proposed or awarded on or after that date. (KG)

Studies

Studies Act of 2010

Legislative Research Commission Studies

S.L. 2010-152, Sec. 2 (SB 900, Sec. 2) authorizes several studies by the Legislative Research Commission, including the following:

- Allowing State Personnel to Transfer Annual and Sick Leave from a City or County.
- Consolidation of State Agencies and Departments.
- Televising House of Representatives and Senate Sessions.
- Efficient E-Commerce in State Government.
- Pre-Escheat Procedures.
- State and Boards and Commission.

This section became effective July 22, 2010. (EC)

Chapter 150B Contested Cases

S.L. 2010-152, Sec. 9.2 (SB 900, Sec. 9.2) authorizes the Joint Legislative Program Evaluation Oversight Committee to include in the 2010 Work Plan for the Program Evaluation Division of the General Assembly a study of Chapter 150B contested cases. As a part of the study, the Division may study the number of administrative law judges' decisions that are overturned by the final agency decision. For these cases, the Division may review the nature of

the case, the basis of the reversal, the number appealed to superior court, and the results of those appeals.

This section became effective July 22, 2010. (BR)

State Investment Study Reporting Date

S.L. 2010-152, Part XXIII (SB 900, Part XXIII) extends the date when the Commission to Study the Governance and the Adequacy of the Investment Authority of Various State-Owned Funds for the Purposes of Enhancing the Return on Investments (Commission) must make its final report. The Commission was scheduled to make its final report to the 2010 Regular Session of the General Assembly. The Commission must now make its final report to the 2011 Session of the 2011 General Assembly.

This section became effective July 22, 2010. (KG)

Extend General Statute Commission Studies

S.L. 2010-152, Part XXV (SB 900, Part XXV) delays reporting deadlines on issues studied by the General Statutes Commission as follows:

- Delays the reporting deadline for the General Statutes Commission's study and recommendations on ways to ensure that the General Statutes properly and uniformly refer to federal or state military organizations. The General Statutes Commission must now report to the 2011 Regular Session of the 2011 General Assembly.
- Maintains the requirement for the General Statutes Commission to study and recommend ways to make the General Statutes and the North Carolina Constitution gender neutral, but deletes the previously specified reporting deadline.

This act became effective July 22, 2010. (TM)

Chapter 21
Transportation

William Patterson (WP), Giles S. Perry (GSP), Kelly Quick (KQ), Wendy Graf Ray (WGR)

Enacted Legislation

Pedestrian Safety Improvements

S.L. 2010-37 (SB 595) requires the Department of Transportation to accept and use any funding provided by a municipal government for a pedestrian safety improvement project on a State road within the municipality's limits, provided the municipality funds 100% of the project and the Department of Transportation retains the right to approve the design and oversee the construction, erection, or installation of the pedestrian safety improvement.

This act became effective July 1, 2010. (GSP)

Military Wartime Veteran Special Plate Change

S.L. 2010-39 (HB 1143) amends the requirements for the issuance of a special plate based upon wartime service in the military. Prior to enactment of this act, veterans who served honorably during periods of war, as specified by statute, were eligible for a special Military Wartime Veteran license plate. The Division of Motor Vehicles was required to receive at least 300 plates for a specific period of wartime service in order to begin issuing plates for that period.

This act changed the requirements for issuance of Military Wartime Veteran license plates, as follows:

- Requires that an applicant for a Military Wartime Veteran license plate have received a campaign or expeditionary ribbon or medal for the applicable period of war service, in order to qualify for the special plate; and
- Provides that the Division is authorized to count applications relating to any of the periods of war listed in reaching the total of 300 applications necessary to issue the special plate.

This act became effective July 1, 2010. (WGR)

DWI Sentencing

S.L. 2010-97, Sec. 2 (SB 1242, Sec. 2) amends the DWI sentencing law concerning parole for persons who have received an active term of imprisonment, are parole eligible having served the minimum term of imprisonment, and have obtained a required substance abuse assessment. Under current law, the person may be paroled only after completing any recommended treatment or training program. This section provides an alternative that would allow the person to be paroled into a residential treatment program.

This section became effective July 20, 2010. (GSP)

Vehicle Inspection

S.L. 2010-97, Sec. 3 (SB 1242, Sec. 3) amends the vehicle inspection law to provide that a new or used vehicle that has received a passing inspection within the previous 12 months, whether acquired from a retailer or a private sale, would not be subject to an additional inspection when the current registration expires. This section provides for the temporary registration of an unregistered vehicle for a period of 10 days to allow for the vehicle to be driven

pending inspection. It also allows for the issuance of a 10-day trip permit for a vehicle whose inspection authorization or registration has expired. Prior law provided for a 3-day trip permit for a vehicle whose inspection authorization or registration had expired, and a 10-day temporary permit for vehicles that failed the emissions inspection.

This section became effective July 20, 2010.

Highway Patrol Motor Carrier Fines/Local Fees

S.L. 2010-129 (SB 1214) clarifies what vehicles are regulated under the Motor Carrier Safety Regulation Unit, amends laws pertaining to property-hauling vehicles, makes changes concerning escort fees, and allows local governments to refund assessments in limited circumstances.

Specifically, the act:

- Provides definitions for gross combination weight rating (GCWR), gross vehicle weight (GVW), and gross combined weight (GCW).
- Provides that the authority of a law enforcement officer to seize a motor vehicle for delinquent fines and penalties pursuant to G.S. 20-96 is not affected by the statutes of limitations set out in Chapter 1 of the General Statutes.
- Adds as a condition for exemption from weight limitations and penalties under G.S. 20-118 a requirement that the property hauling vehicle be registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration. This provision is effective October 1, 2010, and applicable to offenses committed on or after that date.
- Allows funds in the Escort Fee Account to be used to pay actual expenses for escorting vehicles when required by the Department of Transportation. Any unexpended fees may be used by the Highway Patrol to pay for vehicle or equipment maintenance. The act also eliminates a requirement that the Department provide quarterly reports to the legislature on the funds in the special account.
- Provides that vehicles are regulated under the Motor Carrier Regulation Unit if the vehicle has a GVWR, GCWR, GVW, or GCW of 26,001 pounds or more, whichever is greater. This provision is effective October 1, 2010, and applicable to offenses committed on or after that date.
- Adds a provision to Chapter 1 of the General Statutes to establish a 3-year time limitation for commencement of a legal proceeding to collect a civil penalty, civil assessment, or civil fine imposed pursuant to the State's motor vehicle laws.
- Authorizes local governments to refund assessments imposed prior to 2007 to finance capital projects that have been assumed by another unit of local government.

This act became effective July 21, 2010, except as specified above. (GSP)

Increase Drivers License Restoration Fee

S.L. 2010-130 (SB 655) increases the driver's license restoration fee by $25 for licenses revoked for impaired driving. The additional $25 from each fee will be transferred to the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of the Department of Health and Human Services.

This act became effective September 1, 2010. (WP)

Drivers License Change Expiration/8 Years through Age 65

S.L. 2010-131 (SB 181) increases the age cap for persons eligible to be issued an eight-year drivers license, raising it from 54 to 65 years of age. Prior to this act, a drivers license issued to a person at least 18 years old but less than 54 years old would expire on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person 54 years of age or older would expire in the fifth year after issuance. This act increases the age limit for persons eligible to be issued an eight-year drivers license, raising the age limit from 54 to 65. A license issued to a driver over the age of 65 will continue to be valid for five years only.

This act becomes effective January 1, 2011, and applies to any drivers license issued on or after that date. (WGR)

Motor Vehicles Law Changes

S.L. 2010-132 (HB 1729) makes the following changes to the State's motor vehicle laws:

Five-year commercial drivers license expiration date. – The act changes the expiration date of a commercial drivers license to the birth date of the licensee in the fifth year after issuance. It also provides that a renewed commercial drivers license expires five years after the expiration date of the license that is renewed.

Special registration plates on certain property-hauling vehicles. – The act specifies that special registration plates issued to vehicles 7,000 lbs. to 26,000 lbs. are not required to include the word "weighted".

License plate covers. – The act provides that any operator of a motor vehicle who covers any registration number, registration letter, or the State name on a registration plate, number on a year sticker, or number on a month sticker with any frame or transparent clear or color-tinted cover that makes the registration numbers, registration letters, the State name, or the numbers on the stickers illegible commits an infraction.

Repeal emergency use of registration plates. – The act repeals a statute that authorizes the Commissioner of Motor Vehicles to allow emergency use of a registration plate on another vehicle when the vehicle for which it was originally issued is being repaired.

Dealer plate changes. – The act makes the following changes to State law governing dealer plates:

- Increases the number of plates that may be issued to most dealers by two, and increases the cap for larger dealers to no more than five times the average number of qualifying sales representatives employed by the dealer.
- Authorizes specified employees to operate vehicles with dealer plates and dealer transporter plates.
- Increases dealer license plate sanctions as follows:
  - Increases the penalty imposed on an individual driving a vehicle from $50 to $100.
  - Increases the penalty imposed on the dealer from $200 to $250.

Transporter plate changes. – The act makes the following changes to State law governing issuance of transporter plates:

- Clarifies who can obtain a transporter plate: a business or dealer licensed under the Motor Vehicle Dealers and Manufacturers Licensing Law requiring the limited operation of a motor vehicle for the listed purposes.
- Requires a business using a transporter plate for repossession to have proof of garage liability insurance, and limits issuance to a financial institution that is the recorded lien holder.
- Authorizes use of a transporter plate for pick up and delivery of a vehicle that is to be repaired, is to undergo a safety or emissions inspection, or is to be prepared for sale, to road-test the vehicle, if it is repaired or inspected within a 20-mile radius of

the place it is repaired or inspected, and to deliver the vehicle to the dealer. Also limits who may perform the road test. Transporter plates issued to a repair facility are limited to two transporter plates for each business.

- Limits issuance of a transporter plate to move a motor vehicle that is owned by the business, and is a replaced vehicle offered for sale, to a business that has ten or more registered vehicles.
- Limits issuance of transporter plates to move vehicles to and from an auction, to licensed dealers, or to a business contracted by the dealer to deliver vehicles to or from an auction. Any business contracted by the dealer must provide proof of a privilege license and financial responsibility.
- Requires applicants for a transporter plate for use in road testing a repaired truck to show proof of garage liability insurance.
- Authorizes use of a transporter plate to move a newly-manufactured travel trailer, fifth-wheel trailer, or camping trailer between a manufacturer and a dealer, but the transporter plate may not be used on the power unit.
- Authorizes use of a transporter plate to transport a vehicle at least 35 years old to and from a parade or another public event, if the vehicle is titled in this State, and has proof of insurance.
- Restricts the authorized use of transporter plates to move a vehicle that is part of dealer inventory to and from a vehicle trade show or parade in which it is used. Issuance of the plate is limited to licensed dealers.
- Provides that the total number of dealer transporter or dealer plates issued to a dealer may not exceed the total number of plates authorized by statute for licensed dealers.
- Makes transporter plate sanctions applicable to violations of requirements for financial responsibility. Increases the infraction penalties imposed on an individual driving a vehicle from $50 to $100; increases the infraction penalty imposed on the person, dealer, or business to whom a plate is issued from $200 per occurrence to $250 per occurrence; requires the Division of Motor Vehicles to rescind dealer or transporter plates for violations; and makes unlawful sale or rental of a transporter plate a Class I felony.
- Authorizes a law enforcement officer having probable cause to believe that a transporter plate is being used in violation of this section to seize the plate.
- Authorizes staggered issuance of transporter plates.
- Requires the Division of Motor Vehicles to rescind a transporter plate or dealer transporter plate displayed on a motor vehicle for a purpose that is not authorized.
- Requires any vehicle being operated on the highways of the State using a transporter plate to have liability insurance.

Free special plate clarification/Fee for special plate on property-hauling vehicle. – The act clarifies that recipients of the Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War may receive one special registration plate free of charge. However, the act requires recipients to pay registration fees for use of the plates on a vehicle with a registered weight of greater than 6,000 pounds.

Repeal $1 mail-in registration renewal fee. – The act repeals the postage and handling fee of $1 for mail-in registration renewal.

Amend separate registration for logging trucks. – The act amends the Division of Motor Vehicles' requirement for separately registering logging vehicles to help the Internal Revenue Service identify these vehicles as logging vehicles and, therefore, subject them to a reduced federal highway use tax.

Light-traffic road limitations. – The act amends the light-traffic road limitations as follows:

- Provides that a vehicle's point of origin will be treated as a light-traffic road if the point of origin is a non light-traffic road and that road is blocked by light-traffic roads from all directions and is not contiguous with other non light-traffic roads.
- Exempts from the weight and penalty limitations vehicles hauling animal waste products from the animal waste storage site to a farm or field.
- Adds clarifying language to the exemption for livestock or poultry transported from their point of origins to include transportation to a processing plant (was just to first market.)

Incident Management Assistance Patrol use of red lights. – The act authorizes the use of red lights on Incident Management Assistance Patrol vehicles operated by the Department of Transportation.

Extend move-over law to electric utility restoration vehicles. – The act extends the requirement to "move-over" when passing a parked emergency vehicle law so that it applies when passing vehicles being used to restore electric utility service due to an unplanned event.

Parking on highway and highway shoulder changes. – The act makes the following changes to the law pertaining to parking on highways:

- Makes it unlawful to park on the main traveled portion of any highway or bridge with a speed limit posted less than 45 miles per hour.
- Prohibits parking upon the paved or main-traveled portion of any highway or highway bridge with the speed limit posted 45 miles per hour or greater.
- Expands the current prohibition on parking on the shoulder of a highway outside municipalities to all highways, both in and outside of municipalities.

Transporter plate misuse grounds for revoking motor vehicle dealer license. – The act specifies that misuse of transporter plates is grounds for revoking a motor vehicle dealer license.

Yellow light duration at red light camera intersections. – The act amends the red light camera laws to change the standard used to determine the duration of a yellow light at red light camera intersections, from the yellow light duration specified in the Department of Transportation Signals and Geometrics Section Design Manual to the duration in the traffic signal plan of record signed and sealed by a licensed professional engineer, and in compliance with the Manual on Uniform Traffic Control Devices.

Removal of abandoned vehicles on streets. – The act changes the statute that authorizes municipalities to prohibit the abandonment of motor vehicles on public streets and on private property. It allows the removal and disposal of abandoned vehicles left on a public street at any time, if the motor vehicle is determined to be a hazard to the motoring public (was only if the vehicle had been left for longer than seven days.)

Inspection Program Call Center. – The act amends the language in a 2009 session law concerning the replacement of out-of-state contractors with State employees at an existing call center in Bladen County.

The provision of this act that clarifies language concerning the move of the inspection program call center to North Carolina became effective July 21, 2010. The remainder of the act becomes effective December 1, 2010, and applies to offenses committed on or after that date. (WGR)

Turnpike Authority Toll Enforcement Changes

S.L. 2010-133 (HB 1685) makes the following changes to the statutes governing collection and enforcement of tolls by the North Carolina Turnpike Authority:

- Repeals a statute that authorizes the Department of Transportation to charge a toll for a bridge of at least three and one-half miles in length, set toll rates, authorizes employment of toll personnel, specifies use of the toll revenue, and requires an annual report.

- Removes a limitation on the size of the discount the Authority may offer to a motor vehicle with a transponder, or that has prepaid its toll.
- Provides that the Authority must send a bill for tolls that are not paid prior to or at the time of travel.
- Provides that a person who receives a bill for an unpaid open road toll must pay or respond within 30 days of the date of the bill from the Authority, and clarifies that a person may not be charged more than $48 in processing fees in a 12-month period.
- Changes the circumstances in which a person may be subject to a civil penalty for unpaid open road tolls for travel on an Authority facility, as follows:
  - A person who receives two or more bills for unpaid open road tolls and who has not paid within 30 days is subject to a civil penalty of $25.
  - Only one civil penalty may be assessed in a six-month period.
  - The civil penalty must be paid within 30 days of the date of the notice from the Authority, and is payable to the Authority.
- Removes a provision authorizing the Division of Motor Vehicles to collect Authority tolls, processing fees, and civil penalties when vehicle registration is blocked due to unpaid tolls.
- Provides that a request for review of a bill for an unpaid toll must be sent within 30 days of the date of the bill sent by the Authority.

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

Disabled Sportsmen/All-Terrain Vehicles Exception

S.L. 2010-146 (HB 617) permits persons who are eligible for participation in the Disabled Sportsmen Program of the Wildlife Commission to use an All-Terrain Vehicle (ATV) to cross public roads while engaged in licensed hunting or fishing activities. The ATV must be equipped with operable front and rear lights and a horn, and the operator is subject to all State laws regulating operation of ATVs.

This act became effective July 22, 2010. (WP)

Department of Transportation Powers and Duties Changes

S.L. 2010-165 (HB 1734), as amended by S.L. 2010-97, Sec. 14 (SB 1242, Sec. 14) changes statutes governing the Department of Transportation (Department) as follows:

- Repeals a requirement that the Department report annually to the Department of Administration, or to the Governor, on its finances and the physical condition of its buildings, depots, and properties.
- Corrects terminology in G.S. 136-16.10, replacing the term "Controller" with "Chief Financial Officer".
- Eliminates references to a seven-year period for the Transportation Improvement Program.
- Clarifies that the Department has authority over all construction, maintenance, and design of transportation projects.
- Authorizes the Department to acquire rights-of-way for the location or relocation of distributed antenna systems (DAS), a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. The Department would have authority to alter the location or configuration of the systems above or below ground.
- Provides that the Department may enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for right-of-way acquisition.

- Updates references to the North Carolina Turnpike Authority to reflect the transfer of the Authority to the Department.
- Eliminates a requirement that the Department report annually to the Joint Legislative Commission on Seafood and Aquaculture and the Joint Legislative Transportation Oversight Committee on the Department's progress in expanding public access to coastal waters.
- Updates the statute setting out the Department's Disadvantaged Minority-Owned and Women-Owned Businesses Program and extends its sunset from August 31, 2010, to August 31, 2014.
- Transfers the power to make rules and regulations concerning transportation functions assigned to the Department from the Board of Transportation to the Secretary of Transportation or the Secretary's designee.

This act became effective August 2, 2010. (GSP)

Studies

New/Independent Studies/Commissions

Legislative Study Commission on Public-Private Partnerships

S.L. 2010-152, Part XXXII (SB 900, Part XXXII) creates the 16-member Legislative Study Commission on Public-Private Partnerships, consisting of five members of the Senate, five members of the House, three public members appointed by the Speaker of the House of Representatives, and three public members appointed by the President Pro Tempore of the Senate. The Commission is directed to study issues related to Public-Private Partnerships (PPPs), including examination of the appropriate authority for State, regional, and local government units to engage in PPPs for public capital projects through a regulatory framework. The Commission is directed to make a final report, including any proposed legislation, to the 2011 General Assembly upon its convening. The Commission will terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

This Part became effective July 22, 2010. (KQ)

Railroads Study Commission

S.L. 2010-152, Part XXXVI (SB 900, Part XXXVI) establishes the Railroads Study Commission. The Commission consists of five members of the Senate and five members of the House. The Commission is directed to study all issues related to railroads in the State, including passenger rail, freight rail, and corridor issues. The Commission may make a final report, including any proposed legislation, to the 2011 General Assembly upon its convening. The Commission will terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

This Part became effective July 22, 2010. (KQ)

Referrals to Existing Commissions/Committees

Joint Legislative Transportation Oversight Committee Studies

S.L. 2010-152, Part IV (SB 900, Part IV) directs the Joint Legislative Transportation Oversight Committee to study the following topics:

- The issue of untitled vehicles being removed and sold for scrap without sufficient notice to the owner.
- Issues related to the location, funding, construction, maintenance, and operation of visitor centers and welcome centers in the State. This study is to be conducted in consultation with the Department of Transportation and the Department of Commerce.
- The issue of the appropriate scope of power of the Department of Transportation to enter into debt and debt-like agreements pursuant to G.S. 136-18(39).
- Whether to limit the responsibility of developers for the cost of street or highway construction to the amount necessary to serve the projected traffic generated by a development.

This Part became effective July 22, 2010. (KQ)

Referrals to Departments, Agencies, Etc.

Office of State Budget and Management to Study the Funding and Efficacy of the Driver Education Program

S.L. 2010-31, Sec. 28.2 (SB 897, Sec. 28.2). See **Education.**

Board of Directors of Global TransPark Authority to Report on the Authority's Strategic, Business, and Financial Plans; Program Evaluation Division to Conduct a Comprehensive Program and Financial Review of the North Carolina Global TransPark Authority

S.L. 2010-31, Sec. 28.3(a) (SB 897, Sec. 28.3(a)) instructs the Board of Directors of the Global TransPark Authority to report on the Authority's strategic, business, and financial plans. The Board of Directors is required to report on or before December 31, 2010, to the House Appropriations Subcommittee on Transportation and the Senate Committee on Appropriations on the Department of Transportation.

S.L. 2010-31, Sec. 28.3(b) (SB 897, Sec. 28.3(b)) authorizes the Program Evaluation Division of the General Assembly to conduct a comprehensive program and financial review of the North Carolina Global TransPark Authority. The Division is required to prepare a report of the findings and recommendations of the study and submit it to the Joint Legislative Program Evaluation Oversight Committee no later than March 1, 2011.

This section became effective July 1, 2010. (KQ)

Department of Transportation to Adopt a Policy for Naming Highways after Specific Military Veterans

S.L. 2010-31, Sec. 28.4 (SB 897, Sec. 28.4) directs the Department of Transportation to remove the existing prohibition on naming State roads after specific military veterans and to adopt a policy for naming highways after specific military veterans.

The Department of Transportation is required to report to the Joint Legislative Transportation Oversight Committee no later than December 1, 2011, on the new policy and the Department's implementation of the policy.

This section became effective July 1, 2010. (KQ)

Department of Transportation to Develop Selection Criteria for the North Carolina Mobility Fund

S.L. 2010-31, Sec. 28.7(b) (SB 897, Sec. 28.7(b)) instructs the Department of Transportation to develop selection criteria under G.S. 136-188, which designates the use of the North Carolina Mobility Fund.

The Department of Transportation is directed to report to the Joint Legislative Transportation Oversight Committee on its development of the selection criteria. A preliminary report on the selection criteria is due to the Committee by October 1, 2010. A final report is due to the Committee by December 15, 2010.

This section became effective July 1, 2010. (KQ)

Executive Committee for Highway Safety in the Department of Transportation to Study Recommendations for Additional Legislation to Address the Causes of Teen Driving Fatalities

S.L. 2010-152, Part XV (SB 900, Part XV) directs the Executive Committee for Highway Safety in the Department of Transportation to report its recommendations for additional legislation to address the causes of teen driving fatalities to the General Assembly by April 30, 2011.

This Part became effective July 22, 2010. (KQ)

Governor's Logistics Task Force to Study Combining Global TransPark Authority, Ports Authority, and Railroad; and Establishing Service of a Class I Rail Service to the Global Transpark and the Ports

S.L. 2010-152, Part XXX (SB 900, Part XXX) authorizes the Governor's Logistics Task force to study the following issues:

- Combining the operations and governing authority of the Global TransPark Authority, the North Carolina Ports Authority, and the North Carolina Railroad to create one entity and one governing body to oversee the combined infrastructure of air cargo, rail, and sea transportation.
- Establishing service of a Class I Rail service by more than one railroad to both the Global TransPark and the State Ports.

The Task Force may report its findings to the Governor, the General Assembly, and the Joint Legislative Transportation Oversight Committee on or before the convening of the 2011 Regular Session of the 2011 General Assembly.

This Part became effective July 22, 2010. (KQ)

Chapter 22
Utilities

Heather Fennell (HF), Steve Rose (SR)

Enacted Legislation

Use of 911 Funds

S.L. 2010-158 (HB 1691) makes various changes to the statutes governing Emergency Telephone Service, and increases the funding available for supplemental PEG channel support.

911 Service

The act makes the following changes to the statutes governing Emergency Telephone Service:

The 911 Board. – The membership of the 911 Board is changed to increase the total number of local government representatives. The act also prohibits Board members from serving more than two terms.

The Act amends the authority of the 911 Board to allow the Board to establish operating standards for Public Service Answering Points (PSAPs) that receive distributions from the Fund, to create, design, or acquire public education materials regarding the proper use of 911, to pay a private vendor for the provisioning of a network for the purpose of providing 911 service, and to implement statewide projects for the benefit of 911 service. The Board is authorized to increase the percentage of funds it retains for administrative expenses to 2% from 1%.

PSAP Distributions. – Beginning with distributions made in fiscal year 2011, the 911 Board is authorized to determine the monthly distributions to eligible PSAPs. The distribution of funds to eligible PSAPS will be based of the cost of providing 911 service, and the amount will be based on a formula adopted by the Board. The Board must notify each PSAP of the estimated distributions of the next fiscal year by December 31st of the prior year, and notify each PSAP of the actual amount of distributions by June 1.

Fund Use and Fund Balance. – The use of the 911 Fund is expanded to include dispatch equipment within the building where the PSAP is located excluding the costs of base station transmitters, towers, microwave links, and antennae used to dispatch emergency call information from the PSAP. The use also is expanded to include training specific for supervising and training a primary PSAP. A PSAP may use 50% of its fund balance on July 1, 2010, for public safety needs, including costs that are not eligible expenses under G.S. 62A-46.

Supplemental PEG Channel Support

S.L. 2007-151, the Video Service Competition Act, amended the taxation of video programming services and increased the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. The distributions are made quarterly. G.S. 105-164.44I(b) designates $2 million of the video programming sales tax revenue distributed to cities and counties for Supplemental PEG channel support. Revenues not expended for Supplemental PEG support are transferred to the PEG Grant Fund. The PEG Grant Fund is administered by the e-NC Authority.

This act repeals the PEG Grant Fund and increases the revenues from the video programming sales tax designated for Supplemental PEG Channel support to $4 million per year. Cities and counties must continue to certify PEG channels. Each city or county may certify up to

three PEG channels. The yearly cap on funding per PEG channel is removed. Each PEG channel will receive a proportional share of the total revenues available.

This act became effective July 1, 2010. (HF)

Consumer Choice and Investment Act Changes

S.L. 2010-173 (HB 466) makes technical and clarifying changes to the Consumer Choice and Investment Act of 2009, S.L. 2009-328. The Consumer Choice and Investment Act of 2009 allowed incumbent local telephone providers open to competition, and to the extent applicable competing local providers, the ability to elect an alternative form of regulation. This alternative form of regulation is referred to as "subsection (h) regulation." The act makes the following changes:

- Clarifies companies that elect to subsection (h) regulation are not subject to the statutory requirements imposed on companies under rate of return regulation.
- Clarifies the requirement for providers that elect subsection (h) regulation to provide stand-alone basic residential lines to rural customers at rates that are *comparable to* the rates offered urban customers and also allows providers to provide service at rates that are *less than* the rates of urban customers.
- Clarifies subsection (h) regulation does not confer regulatory authority to the Utilities Commission over the rates, terms, and conditions of wholesale telephone service.
- Clarifies competing local providers electing subsection (h) regulation are not subject to provisions regarding the provision of stand-alone basic residential service.

This act became effective July 8, 2010. (HF)

Cleanfields Act of 2010

S.L. 2009-195 (SB 886). See **Environment and Natural Resources**.

Studies

Studies Act of 2010

S.L. 2010-152, Sec. 8.2 (SB 900, Sec. 8.2) directs the Joint Legislative Utility Review Committee to study the issue of gas leases in the central shale belt, located in the Chatham and Moore County area.

This section became effective July 22, 2010. (HF)

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