SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

2011 GENERAL ASSEMBLY
2011 REGULAR SESSION

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RESEARCH DIVISION
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To the Members of the 2011 Session of the 2011 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import from the 2011 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, Brenda Carter, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Judy Collier, Heather Fennell, Kory Goldsmith, Trina Griffin, Tim Hovis, Jeff Hudson, Amy Jo Johnson, Sara Kamprath, Brad Krehely, Mariah Matheson, Theresa Matula, Kara McCraw, Jennifer McGinnis, Harrison Moore, Jennifer Mundt, Shawn Parker, Bill Patterson, Jan Paul, Howard Alan Pell, Giles S. Perry, Patsy Pierce, Kelly Quick, Wendy Graf Ray, Barbara Riley, Greg Roney, Steve Rose, and Susan Sitze. Dan Ettefagh, of the Bill Drafting Division, also contributed to this document. Brenda Carter is chief editor of this year's publication, and Jennifer Mundt is co-editor. Lucy Anders, of the Research Division, also helped edit this document. The specific staff members contributing to each subject area are listed directly below the chapter heading for that area. Staff members' initials appear after their names and after each summary to which 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 "Research Division," then "Publications," 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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Chapter 1
Agriculture and Wildlife

Mariah Matheson (MM), Jan Paul (JP), Barbara Riley (BR)

Enacted Legislation

Retrieval of Big Game

S.L. 2011-22 (HB 29) allows a hunter who has killed or wounded a big game animal during certain hunting hours to use a portable light source and a single dog on a leash to assist in retrieving the animal. A hunter may dispatch a wounded animal using a .22-caliber rimfire pistol, archery equipment, or a handgun legal for that hunting season. A motorized vehicle may not be used in the pursuit and retrieval, which may occur only between the hours of one-half hour after sunset and 11:00 p.m.

This act became effective October 1, 2011. (JP)

Confectioners May Use Up to 5% Alcohol by Volume

S.L. 2011-26 (HB 90) amends the law pertaining to adulterated foods to allow the manufacture and sale of confectionery food items that bear or contain an alcohol content of up to 5% alcohol by volume. This is an increase from the prior level of 0.5%. Any confectionery that contains more than 0.5% alcohol must be conspicuously labeled with the alcohol content.

This act became effective April 7, 2011. (BR)

Exempt Small Agricultural Processing from Permit Requirements

S.L. 2011-41 (HB 162). See **Environment and Natural Resources**.

Swine House Renovations/Site Limits

S.L. 2011-118 (SB 501) adds a new section to the Swine Farm Siting Act providing that certain setback requirements of the act will not apply to the construction or renovation of a swine house that is a component of a preexisting swine farm if the construction or renovation does not:

- Result in an increase in the permitted capacity, as measured in the annual steady state live weight capacity of the swine farm.
- Cause an increase in the total permitted capacity of the animal waste management systems located at the swine farm.
- Cause any portion of the new or renovated swine house to be located any closer to the residence, school, hospital, church, or other building or property boundary that is the object of the siting requirement that the swine house fails to meet.

A portion of the new or renovated swine house may be located closer to a residence, school, hospital, church, or property boundary than otherwise allowable if consent of the property owner is written and recorded. Regardless of the footprint of the existing swine house, renovation or construction of a swine house must not be permitted in the 100-year floodplain.

A preexisting swine farm is one on which operations were begun or for which the site evaluation was approved prior to October 1, 1995.

This act became effective June 13, 2011, and applies to constructions or renovations occurring on or after that date. (JP)

Energy Crops for Biofuels Feedstocks

S.L. 2011-198 (SB 378) requires the Interagency Group to establish agronomic rates to ensure proper application levels of animal waste for the following energy crops: miscanthus; switchgrass; fiber sorghum; sweet sorghum; and giant reed. The Interagency Group, established by the General Assembly in 1995 to work on issues related to animal waste management, consists of two representatives from each of the following State agencies: the Division of Soil and Water Conservation in the Department of Environment and Natural Resources, the Department of Health and Human Services, the Department of Agriculture and Consumer Services, and the Cooperative Extension Service.

The act required the Interagency Group to submit a report on the development of interim agronomic rates by July 1, 2011, and a report of the final agronomic rates must be submitted by December 1, 2014. Both the interim agronomic rates and the final rates, along with any accompanying guidance for technical specialists, must be published no later than July 1, 2011, and December 1, 2014, respectively. In developing the agronomic rates, the Interagency Group may consider nutrient data from research trials, peer-reviewed publications, current studies, and any other information deemed appropriate. The agronomic rates must ensure that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards. The Interagency Group may seek the assistance and expertise of any other entity and with other state agencies. All State agencies must cooperate with the Interagency Group and, upon request, assist the Interagency Group in fulfilling its responsibilities.

This act became effective June 23, 2011. (BR)

Amend Weight Limits for Farm Products

S.L. 2011-200 (HB 468). See **Transportation**.

Codify North Carolina Century Farms Program in Department of Agriculture and Consumer Services

S.L. 2011-201 (SB 493) amends the statutory duties of the Commissioner of Agriculture and the Board of Agriculture to include responsibility for administering the North Carolina Century Farms program. The program recognizes farms in the State that have been continuously owned by the same family for at least 100 years.

This act became effective July 1, 2011. (MM)

Voluntary Agriculture Districts

S.L. 2011-219 (HB 406) provides that land engaged in agriculture may qualify for enrollment in a voluntary agricultural district, even though it does not qualify for taxation at its present-use value.

The act also requires residential lots created on land that is the subject of a conservation agreement to meet municipal zoning and subdivision requirements.

The act exempts revocable voluntary agricultural district conservation agreements from public recording of agreement requirements.

This act became effective June 23, 2011. (JP)

Clarify Agricultural Development/Preservation in Department of Agriculture and Consumer Services

S.L. 2011-251 (SB 499) clarifies that the Department of Agriculture and Consumer Services must administer and supervise the Agricultural Development and Farmland Preservation Enabling Act, which includes the Agricultural Development and Farmland Preservation Trust Fund, voluntary agricultural districts, and agricultural conservation easements.

This act became effective June 23, 2011. (MM)

Domestic Fowl Stray/Commercial Poultry Lands

S.L. 2011-313 (SB 602). See **Criminal Law and Procedure**.

Farms Exempt from City Annexation and Extraterritorial Jurisdiction

S.L. 2011-363 (HB 168). See **Local Government**.

Building Codes/Expand Equine Exemption

S.L. 2011-364 (HB 329). See **Insurance**.

Swine in Transport/Regulate Feral Swine

S.L. 2011-369 (HB 432) adds a new article entitled "Transportation of Swine" to the General Statutes governing agriculture. The act requires a form of identification approved by the Board of Agriculture when transporting swine off the premises of their owner and on a public road within the State; otherwise, the swine are presumed feral and subject to regulation by the Wildlife Resources Commission (WRC). Failure to obtain the required identification may result in a civil penalty of up to $5,000 per swine. Anyone who knowingly provides swine identification to someone other than the owner or engages in any other prohibited activity may be subject to a $1,000 fine per occurrence.

The act classifies all free-ranging mammals of the species Sus scrofa as feral swine. It provides for the taking of feral swine as a nongame animal, prohibits the removal of live feral swine from traps, and creates new provisions making it a separate Class 2 misdemeanor to remove live feral swine from traps or to transport the live swine after removal. The act specifies that a person hunting feral swine with the use of firearms must wear a hunter orange cap, hat, or garment.

The act eliminates a requirement for a wild boar hunting license and removes wild boar from a prohibition against taking specified animals with certain kinds of bait.

The act authorizes the WRC to adopt rules prescribing seasons and the manner of taking wild animals and wild birds with the use of artificial light and electronic calls, and eliminates the .22 caliber limitation for the pistol a hunter may use during the open season for particular species.

The new article relating to transportation of swine becomes effective October 1, 2012. The remainder of the act became effective October 1, 2011. This act applies to acts occurring on or after the effective date. (JP)

Studies

Referrals to Existing Commissions/Committees

Study Fox Laws

S.L. 2011-380 (HB 755) directs the Wildlife Resources Commission (WRC) to undertake a study of fox and coyote populations in the State and to recommend management methods and controls designed to ensure statewide conservation of fox populations while managing adverse effects of coyote populations. In conducting the study, the WRC is to solicit input from interested stakeholders, including hunters, trappers, controlled hunting preserve operators, public health authorities, local governments, the North Carolina Department of Agriculture and Consumer Services, and private landowners. The WRC must complete its study by April 1, 2012, and submit a report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the chairs of the House Committee on Agriculture, and the chairs of the Senate Committee on Agriculture, Environment, and Natural Resources.

This act became effective June 27, 2011. (BR)

Chapter 2
Alcoholic Beverage Control

Brenda Carter (BC), Kelly Quick (KQ), Susan L. Sitze (SLS)

Enacted Legislation

Confectioners May Use Up to 5% Alcohol by Volume

S.L. 2011-26 (HB 90). See **Agriculture and Wildlife.**

Wine Distribution Territories

S.L. 2011-73 (SB 130) amends the law concerning a wine wholesaler's primary area of responsibility, to prohibit a wine wholesaler from distributing any brand of wine to a retailer located outside the wholesaler's sales territory for that brand. However a wholesaler may, with the approval of the Alcoholic Beverage Control Commission, distribute wine outside its designated territory when there has been a temporary service interruption and the wholesaler's service is requested by the winery and the wholesaler whose service is interrupted. A wholesaler is required to service retail permit holders within its designated territory without discrimination, and to make a good faith effort to make available any brand the wholesaler is authorized to distribute in the territory with the exception of private label brands.

The act amends the law pertaining to retail permits for the off-premises sale of wine, to allow one permittee to transfer wine to another permittee when both are under the same ownership or control. Prior to, or at the time of, the transfer the transferor must provide written or verifiable electronic notice of the transfer to each wholesaler who distributes the product being transferred. The notice must identify both the transferor and the transferee, and must specify the date of transfer, quantity, and items transferred.

This act became effective May 12, 2011, and its provisions apply to all existing franchise agreements. (BC)

Breweries to Sell Malt Beverages on Premises

S.L. 2011-107 (HB 98) amends the law pertaining to brewery permits by providing that a brewery located in an area where the sale of any type of alcoholic beverage is authorized by law may obtain an on-premises malt beverage permit for sale of the brewery's product at the brewery. Only breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year will qualify for the on-premises retail permit. The act makes a conforming change in the law pertaining to on-premises malt beverage permits, adding authorized breweries to the list of entities that qualify for the permit. The act makes it clear that any additional retail locations operated by a brewery must be in areas where the sale of malt beverages is legal.

This act became effective June 3, 2011. (BC)

Alcoholic Beverage Control Law/Eastern Band of Cherokee Indians

S.L. 2011-333 (SB 324) authorizes the Eastern Band of Cherokee Indians to hold tribal Alcoholic Beverage Control (ABC) elections and to establish a tribal ABC Commission to regulate the purchase, consumption, sale, and delivery of alcoholic beverages at retail. The tribal ABC Commission must adopt the rules of the North Carolina ABC Commission regulating retail outlet

activity and must purchase spirituous liquor for resale exclusively from the North Carolina ABC Commission at the same price and on the same basis that such spirits are purchased by local boards.

This act became effective June 27, 2011. (BC)

Studies

Legislative Research Commission

The Legislative Research Commission (LRC) established a joint committee to study the following aspects of the current State and local alcoholic beverage control (ABC) law in North Carolina:

- Whether the involvement in the distribution and sale of spirituous liquor is a core government function of State and local government.
- The privatization and divestiture of the ABC system, including potential recurring and nonrecurring revenue from the divestiture of the ABC system's current assets.
- A comparison of the North Carolina ABC system with other similarly situated states that have recently privatized or studied the privatization of their ABC systems, including Ohio and Virginia.
- The impact that privatizing the wholesale and retail components of the distribution of spirituous liquor would have on:
  - State and local revenues used for providing core services.
  - Mental health and substance abuse services.
  - Underage drinking.
  - Consumer access to spirituous liquor in both urban and rural areas.
  - Product availability.
- The potential for phasing out of local governments from the operation of the retail distribution of spirituous liquor.
- An analysis of local ABC Boards and local governments that may benefit from divestiture of the ABC system.
- A comparison of the current excise taxes and bailment fees applied to spirituous liquor in North Carolina versus other states.

The committee's report, if any, must be submitted to the LRC no later than Friday, April 27, 2012. (BC)

Chapter 3
Children and Families

Jan Paul (JP), Wendy Graf Ray (WGR)

Enacted Legislation

Child Care Subsidy Rates

S.L. 2011-145, Sec. 10.1 (HB 200, Sec. 10.1) does the following:

- Establishes the maximum gross income for eligibility for subsidized child care services and creates the formula for determining the amounts of fees payable by families who are required to share in the cost of care, based on gross income and adjusted for family size.
- Sets forth requirements for the purchase of child care services for low-income children, sets maximum rates that may be charged to families by child care facilities participating in the subsidized child care program, prohibits payments for transportation services or registration fees, and limits payments for subsidized child care services for postsecondary education to a maximum of 20 months of enrollment.
- Provides for payment rates for center-based and home-based child care providers in counties that do not have at least 50 children in each age group.
- Requires a market rate to be calculated for child care centers and homes at each rated license level for each county and for each age group of enrollees, and directs the Division of Child Development, Department of Health and Human Services to calculate a statewide rate and regional market rates for each license level and age category.
- Provides that facilities licensed and operated pursuant to specified statutory provisions may participate in the child care subsidy program, prohibits the use of separate licensing requirements in the selection of facilities for participation, requires facilities to meet any additional applicable requirements of federal law or regulations, requires facilities that are exempt from regulation to meet other requirements established by law and by the Social Services Commission, and prohibits county departments of social services or other local contracting agencies from reducing a provider's subsidized child care rate because of the provider's failure to comply with requirements additional to those provided in this section.
- Requires payment for subsidized child care services provided with Work First Block Grant funds to comply with regulations and policies issued by the Division of Child Development.
- Provides that noncitizen families residing in the State legally are eligible for child care subsidies if other eligibility criteria are met. Noncitizen families residing in the State illegally are ineligible for subsidies unless the child for whom the subsidy is sought is one or more of the following:
  - Receiving child protective services or foster care services.
  - Developmentally delayed or at risk of becoming developmentally delayed.
  - A United States citizen.

This section became effective July 1, 2011. (JP)

Consolidate More At Four Program into Division of Child Development

S.L. 2011-145, Sec. 10.7 (HB 200, Sec. 10.7), as amended by S.L. 2011-391, Sec. 22 (HB 22, Sec. 22), directs the Department of Public Instruction, Office of Early Learning, and the Department of Health and Human Services to consolidate the More At Four Program into the Division of Child Development, making it the Division of Child Development and Early Education (DCDEE). The Department of Health and Human Services must provide regulation and monitoring of the system of payment and reimbursement for the More At Four program, which shall be designated as "prekindergarten" on the five-star rating scale. The Child Care Commission of the Department of Health and Human Services must adopt rules for programmatic standards for regulation of prekindergarten classrooms and must approve comprehensive, evidence-based early childhood curricula with a reading component.

This section adds two members to the Child Care Commission to be appointed by the General Assembly, one upon recommendation of the President Pro Tempore and one upon recommendation of the Speaker of the House of Representatives. Both new members must be early childhood education specialists.

This section also provides the following:

- The prekindergarten curricula must be taught in four- and five-star rated facilities.
- DCDEE must adopt a policy to encourage prekindergarten classrooms to blend private pay families with prekindergarten subsidized families in the same manner that regular subsidized and private pay families are blended.
- The prekindergarten program may continue to serve at-risk children, but the total number of at-risk children shall constitute no more than 20% within the program.
- Any age-eligible child who is the child of an active duty member of the military or a member of the military injured or killed on active duty is eligible for the program.
- DCDEE must adopt policies that improve the quality of childcare for subsidized children.
- DCDEE must implement a parent co-payment requirement for prekindergarten classrooms. The co-payment must be the same amount as that required of parents subject to regular child care subsidy payments.
- All prekindergarten classrooms must participate in the Subsidized Early Education for Kids (SEEK) accounting system.
- DCDEE must establish reimbursement rates based on newly-increased requirements and higher teacher standards.

This section became effective July 1, 2011. (WGR)

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

S.L. 2011-145, Sec. 10.15 (HB 200, Sec. 10.15) establishes the School-Based Child and Family Team Initiative to identify and coordinate community services and support for children at risk of school failure or out-of-home placement. The Initiative must be based on a strong infrastructure of interagency collaboration, as well as other principles set out in this section. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children are jointly responsible and accountable for improving outcomes for at-risk children and their families. The

section sets out program goals and services, local level responsibilities and reporting requirements, and provides for local advisory committees.

This section also establishes the North Carolina Child and Family Leadership Council within the Department of Administration. The purpose of the Council is to advise the Governor in the development of the Initiative and to ensure active participation and collaboration by all State agencies and their local counterparts. The Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Administrative Office of the Courts, and the Superintendent of Public Instruction are directed to ensure their agencies collaborate in the development and implementation of the Initiative.

This section became effective July 1, 2011. (WGR)

Department of Health and Human Services Regulatory Functions Study and Plan

S.L. 2011-145, Sec. 10.17 (HB 200, Sec. 10.17). See **Health and Human Services**.

Expand Access/Death Certificate/Adult Adoptee

S.L. 2011-237 (HB 846) expands a provision that allows a confidential intermediary to obtain the death certificate of a person who is the subject of a search if that person is deceased. A confidential intermediary is a licensed adoption agency staff person authorized to act as a third party to facilitate contact between an adult adoptee or an adult sibling or family member of a deceased adoptee and the biological parent or an adult family member of a deceased biological parent. The act provides that when a confidential intermediary determines that a lineal ascendant of the deceased person who is the subject of the search is also deceased, the agency may obtain a copy of the death certificate of the deceased lineal ascendant.

This act became effective June 23, 2011. (WGR)

Set Aside Paternity/Child Support

S.L. 2011-328 (SB 203) provides that an order of paternity or an affidavit of parentage may be set aside at any time by a trial court if the paternity order or the affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect, and genetic tests establish that the putative father is not the biological father of the child. The burden of proof in any motion to set aside an affidavit of parentage after 60 days or to set aside an order of paternity is on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court may order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing in accordance with State law. If the court determines, as a result of genetic testing, that the putative father is not the biological father of the child and the order of paternity or the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity or the affidavit of parentage and terminate all future child support obligations of the putative father with regard to the child. The court may consider the best interests of the child in making the determination. The act does not affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

A father who is required to pay child support, whether under an order or an agreement subject to modification, has the right to file a motion in the cause in a pending child support action, or as an independent civil action for relief from child support, within one year of the date he knew he was not the child's father. The act sets out the required contents of the motion or claim for relief. The court may order the child and both parents to submit to genetic paternity testing upon a showing of good cause, and may hold a party in contempt or subject the party to

sanctions for failure to comply with such an order. In certain circumstances, the father's child support obligation may be suspended while the motion or claim is pending.

The court has discretion to grant relief from a child support order when:

- Paternity has been set aside pursuant to statute, or
- The moving party proves by clear and convincing evidence:
  - Genetic paternity testing establishes that the moving party is not the child's biological father; and
  - The moving party has not acknowledged paternity or has acknowledged paternity without knowing he was not the child's biological father.

If the moving party fails to meet its burden of proof, the court must deny the motion or claim. Further, if the court finds the moving party did not act in good faith in filing the motion or claim for relief, the court must award attorneys' fees to the other party. If the court finds the moving party has met its burden of proof, an order must be entered terminating the child support obligation. Any past-due child support would not be affected and would remain due and owing. If the court finds the child's mother used fraud, duress, or misrepresentation causing the moving party to believe he was the father, the court may order the mother to reimburse the amount of any child support received after the motion or claim was filed; however, the father has no right to reimbursement of past child support paid on behalf of the child to the State if the child is in the custody of the State, or if the father was under an order to pay support in a IV-D (Child Support Enforcement program) case. If the child was born in North Carolina and the moving party is named as the father on the child's birth certificate, the clerk of superior court must notify the State Registrar of the court's order. The act provides that the period of limitation for filing a motion for relief is tolled during a service member's deployment.

This act becomes effective January 1, 2012, and applies to motions or claims for relief filed on or after that date. Notwithstanding the provision requiring motions or claims to be filed within one year of discovery that the moving party is not the father, any person who otherwise would be eligible to file a motion or claim may file a motion or claim pursuant to this act prior to January 1, 2013. (JP)

Chapter 4
Civil Law and Procedure

Erika Churchill (EC), Brad Krehely (BK), Bill Patterson (BP), Jan Paul (JP),
Giles Perry (GSP), Barbara Riley (BR), Steve Rose (SR)

Enacted Legislation

Amend Rules of Civil Procedure/Electronically Stored Information

S.L. 2011-199 (HB 380) amends the North Carolina Rules of Civil Procedure concerning discovery of electronically stored information. Specifically, the act amends Rule 26 (General provisions regarding discovery), Rule 33 (Interrogatories to parties), Rule 34 (Production of documents, electronically stored information, etc.), Rule 37 (Failure to make discovery; sanctions), and Rule 45 (Subpoena) to specifically address the procedure for handling electronically-stored information. The act also amends Rule 16 (Pre-trial procedure; formulating issues) concerning the effect of pretrial conferences. The provisions of this act were recommended by the North Carolina Bar Association Litigation Section E-Discovery Committee.

This act became effective October 1, 2011, and applies to actions filed on or after that date. (GSP)

Uniform Depositions and Discovery Act

S.L. 2011-247 (HB 379) adopts a slightly modified version of the Uniform Interstate Depositions and Discovery Act, and amends Rule 45 of the North Carolina Rules of Civil Procedure (NCRCP) to provide a uniform procedure for obtaining commissions to take discovery from out-of-state witnesses in cases pending in North Carolina courts.

The act adds a new Chapter 1F to the General Statutes that establishes a procedure for the issuance of North Carolina subpoenas for discovery in cases pending in other states. The party seeking the subpoena must submit the foreign subpoena to the clerk of court of the county in which discovery is sought. When presented with a foreign subpoena, the clerk must open a court file promptly, collect the appropriate filing fee, and issue a subpoena for service upon the person sought to be deposed. The subpoena must incorporate the terms of the foreign subpoena and contain the names, addresses, and telephone numbers of all counsel of record in the relevant proceeding and of any party not represented. Service of the subpoena under G.S. 1F-3 must follow Rule 45 of the NCRCP. The NCRCP relating to discovery, depositions, production of documents, and subpoenas, specifically Rules 26, 28, 30, 31, 34, and 45 also apply.

Issues between the party seeking discovery and the person from whom discovery is sought must be submitted to the court in the county in which the discovery is to be conducted, and North Carolina law applies. For disputes between parties to the action, appropriate relief must be had in the court in which the action is pending.

The act amends G.S. 1A-1, Rule 28(d) so it applies only to persons wishing to take depositions in North Carolina to be used in proceedings in foreign countries. Rule 28(d) no longer applies to depositions in North Carolina for actions pending in other states.

The act amends G.S. 1A-1, Rule 45 to provide a procedure for obtaining discovery from persons outside of North Carolina. Discovery may be had through oral depositions, depositions upon written questions, and requests for production of documents. The party seeking discovery must follow the procedures required under the laws of the jurisdiction in which discovery is sought.

Where the foreign jurisdiction requires a commission, the commission may be obtained from the court in which the action is pending by filing a motion requesting the commission be issued. The motion must meet requirements specified in the act, and if the motion is unopposed or good faith efforts to confer have been made, the motion must be calendared for a hearing within 20 days before the court in which the action is pending. If the court determines that the moving party has failed to make good faith efforts to confer with all other parties before filing the motion, the court must refuse to issue the commission. The court may otherwise refuse to issue the commission only on a showing of substantial good cause. If the court determines that a party opposed the motion without good cause, the court must require that party to pay the moving party reasonable costs and expenses incurred, including attorneys' fees, unless there are circumstances that would make such an award unjust.

The commission, if issued, must include any terms required by the foreign jurisdiction to obtain the discovery. The commission also must state the time and place the discovery is to occur, along with the name and address of the person from whom the discovery is sought, if known. If the name and address of the person is unknown, there must be a general description of the person sufficient to identify the person or the particular class or group to which the person belongs. The commission also must include a copy of any case management order, discovery order, or other rule or order establishing discovery deadlines in the North Carolina action.

The Revisor of Statutes is directed to print, as annotations to the statutes, such relevant portions of the Official Comments to the act and explanatory comments as the Revisor deems appropriate.

This act became effective December 1, 2011, and applies to all cases then pending or filed on or after that date. (BR)

Tort Reform for Citizens and Businesses

S.L. 2011-283 (HB 542), as amended by S.L. 2011-317 (SB 586), amends the General Statutes as follows:

- Enacts a new evidence rule under which proof of past medical expenses is restricted to evidence of the amount actually paid, or required to be paid, to fully satisfy the bills.
- Modifies the presumption that arises when a party testifies and offers records of charges for medical or funeral services.
- Adopts the federal evidence rule (the "Daubert Rule") governing the admissibility of expert witness testimony.
- Amends the law governing an award of attorneys' fees in certain lawsuits to:
  - Double the size of the maximum award that qualifies a case for consideration of an attorneys' fee award.
  - Place a cap of $10,000 on the attorneys' fees that can be awarded.
  - Prohibit an award of attorneys' fees absent court determination that the amount recovered was more than the highest pre-trial offer made and that there was an unwarranted refusal by the defendant to negotiate or pay the claim.
- Codifies the existing common law general rule of no landowner liability for injury to trespassers, with an exception for willful and wanton or intentional injury, and for negligent injury to child trespassers too young to appreciate the danger of the artificial condition causing injury.
- Provides that the invalidity of any provision of this act or its application to any person or circumstance does not affect the remainder of the act or the applicability of the provision to other persons or circumstances.
- Modifies the burden of proof established in S.L. 2011-400 for medical malpractice claims arising out of treatment of a pregnant woman having contractions, whose condition did not require immediate medical attention to avoid seriously jeopardizing her health or the health of the unborn child, seriously impairing her bodily functions,

or causing serious dysfunction of any bodily organ or part. Such claims must be proved by a preponderance of the evidence, rather than by "clear and convincing evidence," as is required for malpractice claims arising out of the treatment of or failure to treat an "emergency medical condition." This provision became effective June 24, 2011.

Except as noted, this act became effective October 1, 2011, and applies to actions arising on or after that date. (BP)

Attorney Fees/City or County Action Outside Authority

S.L. 2011-299 (HB 687) allows the court to award reasonable attorneys' fees and costs in an action in which a city or county is a party, if the court finds the city or county acted outside the scope of its legal authority. If the court also finds the action was an abuse of the city's or county's discretion, the court must award attorneys' fees and costs.

This act became effective October 1, 2011, and applies to claims for relief brought or defended on or after that date. (BP)

Motion Hearings in Multicounty District/Rule 7 of Rules of Civil Procedure

S.L. 2011-317 (SB 586) amends Rule 7 of the Rules of Civil Procedure to provide that, with the permission of the senior resident superior court judge, a motion in a civil action in a county that is part of a multicounty judicial district may be heard during civil session in any county within the judicial district.

This act became effective October 1, 2011, and applies to motions filed on or after that date. (JP)

Miscellaneous Service/Process Amendments

S.L. 2011-332 (SB 300) implements the following changes recommended by the General Statutes Commission:

- Allows service by signature confirmation or designated delivery service in small claims cases assigned to magistrates and in administrative cases.
- Clarifies the 60-day time frame for serving a summons under Rule 4 of the Rules of Civil Procedure applies to all summonses under Rules 4(j) and (j1).
- Requires that a copy of the motion to terminate parental rights served on a parent be sent to that parent's attorney of record, if any.
- Requires that a party's attorney of record, if any, must be served when service is made under Rule 5(b) of the Rules of Civil Procedure in addition to any service on the party.
- Clarifies that an attorney may be served under Rule 5(b) by mail.

This act became effective October 1, 2011. (BK)

Allow Attorneys' Fees in Business Contracts

S.L. 2011-341 (SB 414) authorizes the court or arbitrator in a dispute involving a business contract to award reasonable attorneys' fees in accordance with the terms of the contract, provided all the parties to the contract have signed it. The award of reasonable attorneys' fees may not exceed the monetary damages awarded. In determining the

reasonableness of the fees, the court or arbitrator may consider a nonexclusive list of factors, including:

- The amount in controversy and the results obtained.
- The reasonableness of the time and labor expended and the billing rates charged.
- The novelty and difficulty of the questions raised in the action.
- The legal skill required.
- The relative economic circumstances of the parties.
- Settlement offers made prior to the institution of the action.
- Offers of judgment and whether the judgment obtained was more favorable than the offers.
- Whether a party unjustly exercised superior economic bargaining power.
- The timing of settlement offers.
- The amounts of settlement offers as compared to the verdict.
- The extent to which the party seeking attorneys' fees prevailed in the action.
- The amount of attorneys' fees awarded in similar cases.
- The terms of the business contract.

This act became effective October 1, 2011, and applies to business contracts entered into on or after that date. (BK)

Zoning Statute of Limitations/Agricultural Districts Change

S.L. 2011-384 (HB 806). See **Local Government**.

Medical Liability Reforms

S.L. 2011-400 (SB 33), as amended by S.L. 2011-283 (HB 542), makes the following changes to laws relating to money judgment appeal bonds, bifurcation of trials in civil cases, and medical liability:

- Requires the bond for appeal from a money judgment to be set based on the amount of the judgment, the limits of the appellant's liability insurance coverage, and the appellant's net worth.
- Requires separate trials before the same jury on the issues of liability and damages on motion of any party to a tort action seeking damages of at least $150,000, unless the court for good cause shown orders a single trial and excludes evidence relating solely to compensatory damages during the liability phase of the trial.
- Requires medical malpractice plaintiffs to certify that all medical records pertaining to the alleged negligence reasonably available to the plaintiff have been reviewed by the expert witness who will testify at trial.
- Prohibits expert testimony on the appropriate standard of care of a hospital or other health care or medical facility as it relates to administrative or other nonclinical issues if the witness lacks substantial knowledge, by training and experience, about the standard of care among such facilities in the same or similar communities.
- Expands the definition of "health care provider" in medical malpractice statutes to include adult care homes; and expands the definition of "medical malpractice action" to include a claim against a hospital, nursing home, or adult care home seeking damages for personal injury or death and alleging a breach of administrative or corporate duties to the patient, if the claim arises from the same facts as a claim arising out of furnishing, or failure to furnish, professional services by a health care provider. This provision became effective October 1, 2011, and applies to causes of action arising on or after that date.
- Requires the trier of fact in a medical malpractice case to determine liability by comparing the conduct of the defendant with the standards of practice applicable

"under the same or similar circumstances," and requires plaintiff to prove liability by clear and convincing evidence for claims arising out of "emergency medical treatment" as defined under federal law. This provision became effective October 1, 2011, and applies to causes of action arising on or after that date.

- Makes the following changes applicable in medical malpractice actions:
  - Caps awards of noneconomic damages at a total of $500,000 for all defendants, adjusted for inflation every three years, except for disfigurement, permanent injury, or death resulting from reckless, grossly negligent, fraudulent, intentional, or malicious acts of failures of the defendant.
  - Requires the trier of fact to specify in its verdict the amount being awarded for noneconomic damages, present economic damages, future economic damages, loss of future earnings, and loss of future household services.
  - Prohibits informing the jury of the limit on noneconomic damages.
- Requires the verdict sheet in a medical malpractice action to state separately any amount awarded for noneconomic damages.
- Shortens the time within which a medical malpractice claim must be brought on behalf of a minor, if the limitations period expires before the minor's tenth birthday. This provision became effective October 1, 2011, and applies to causes of action arising on or after that date.

Except as otherwise noted, this act became effective October 1, 2011, and applies to actions commenced on or after that date. (BP)

Major Pending Legislation

Require Certificate of Merit in Malpractice Claims against Design Professionals

Senate Bill 435 (2nd Edition) would require dismissal of any claim alleging malpractice by a State-licensed professional engineer or architect, or by any firm in which the engineer or architect practices, unless the pleading asserting the claim:

- States the professional design services and all records relating to the alleged negligence have been reviewed by a licensed engineer or architect holding the same type of license and practicing in the same area of practice as the defendant, who is willing to testify that the claim has merit, and who either is reasonably expected to qualify as an expert witness or is someone the plaintiff will seek to have qualified by motion, filed with the pleading, showing extraordinary circumstances warranting expert testimony to serve the ends of justice; and
- Is filed with a certificate of merit signed by an engineer or architect, certifying that he or she has reviewed all records provided by the claimant, has reviewed the allegations of the complaint, and is willing to testify that the claim has merit.

The bill also would provide that on motion of the plaintiff prior to the expiration of the applicable statute of limitations, the court could extend the statute of limitations by up to 120 days upon a showing of good cause, to permit the plaintiff to comply with these requirements.

The bill was referred to the House Select Committee on Tort Reform on June 8, 2011. (BP)

Chapter 5
Commercial Law and Consumer Protection

Drupti Chauhan (DC), Erika Churchill (EC), Karen Cochrane-Brown (KCB),
Heather Fennell (HF), Kory Goldsmith (KG), Brad Krehely (BK),
Bill Patterson (BP), Wendy Graf Ray (WGR), Greg Roney (GR)

Enacted Legislation

Economic Development Grant Reporting

S.L. 2011-145, Sec. 14.2 (HB 200, Sec. 14.2) requires the Department of Commerce to report specified information concerning businesses to which the State has granted economic development incentives. The information must be published annually and provided to the General Assembly on a quarterly basis. The Department also must post a summary of the report on its website. The Department is not required to include information in its annual report relating to economic development incentives provided to local governments prior to July 1, 2011.

This section became effective July 1, 2011. (WGR)

Extend Deadline for Twenty Percent Reduction on Petroleum Products Used for State Fleets/Clarify Reporting Requirement

S.L. 2011-145, Sec. 14.2B (HB 200, Sec. 14.2B) extends until July 1, 2016, the deadline for all State agencies, including universities and community colleges, to achieve a 20% reduction of petroleum products consumed by State-owned vehicle fleets. The requirement for State agencies to annually report petroleum reduction efforts to the State Energy Office is extended from September 1, 2011, through September 1, 2016, and the requirement for the State Energy Office to annually report agencies' progress on petroleum reduction efforts is extended from November 1, 2011, through November 1, 2016.

This section became effective July 1, 2011. (GR)

Transfer Employment Security Commission to Department of Commerce

S.L. 2011-145, Sec. 14.5 (HB 200, Sec. 14.5) transfers the Employment Security Commission (ESC) to the Department of Commerce as a Type I transfer. With the Type I transfer:

- The statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, and allocations or other funds (including the functions of budgeting and purchasing of the ESC) are transferred to the Department of Commerce.
- The prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications of the ESC are transferred to the Secretary of Commerce.

This section became effective November 1, 2011. (HF)

Transfer of Ports Authority from Department of Commerce to Department of Transportation

S.L. 2011-145, Sec. 14.6 (HB 200, Sec. 14.6) transfers the State Ports Authority from the Department of Commerce to the Department of Transportation by a Type II transfer. As a Type II transfer, the Ports Authority will be administered under the direction and supervision of the Department of Transportation but will exercise all its prescribed statutory powers independently of the Secretary of Transportation, except for management functions, which will be performed under the direction and supervision of the Secretary of Transportation.

This section became effective July 1, 2011. (BP)

Allow Savings Promotion Raffles

S.L. 2011-146 (SB 513) allows a credit union to provide savings promotion raffles. The sole consideration for the raffle is deposit of a minimum specified amount of money in a savings account or other savings program offered by the credit union. The credit union must maintain records of the raffle and must fully disclose the terms and conditions of the promotion.

Nonprofits are permitted to hold up to two raffles per year. A raffle is defined as "a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances." The maximum prize that may be offered is limited to $125,000 in cash, merchandise with a fair market value of $125,000, or real property with a maximum appraised value of $500,000. At least 90% of the net proceeds of a raffle must be used by the nonprofit for charitable, religious, educational, civic, or other nonprofit purposes. Violation is a Class 2 misdemeanor.

This act became effective October 1, 2011. (EC)

Increase Payment of Unclaimed Property Claims

S.L. 2011-230 (HB 692) makes the following changes to Article 4 of Chapter 116B of the General Statutes concerning unclaimed property:

- Requires the Department of Transportation's Division of Motor Vehicles, the Department of Revenue, and the Employment Security Commission to annually provide information to the State Treasurer for use in locating owners of unclaimed property.
- Changes the definition of "property" to limit the reporting requirement for abandoned tangible personal property to financial institutions holding property physically located in a safe deposit box or other safekeeping depository.
- Reduces the dormancy period (the time after which unclaimed property is deemed to be abandoned) to one year for wages and other compensation for personal services.
- Requires holders of unclaimed property to include in their reports additional information about apparent owners, including: full name; last known address; social security number or taxpayer identification number; date of birth; driver's license or state identification number; and email address of each person who appears to be an owner of the property. In addition, holders may wait to file reports until a year in which the aggregate value of abandoned property held exceeds $250.
- Requires publication of a notice of the sale of abandoned property at least twice a year in a major newspaper in the State's major media markets.

This act became effective October 1, 2011. (BP)

Payable on Death Accounts

S.L. 2011-236 (HB 686) expands the permissible beneficiaries of a payable on death account (POD) with financial institutions to include an entity other than a natural person, such as a charity, private trust, or corporation. The statutory POD authorized by this act is not exclusive, and financial institutions may offer accounts with different incidents of ownership.

This act became effective October 1, 2011, and applies to agreements executed on or after that date. Statutory POD accounts created prior to October 1, 2011, remain subject to the laws in effect at the time the parties executed the agreement. (GR)

Pesticide Registration Paper Reduction

S.L. 2011-239 (SB 603) eliminates the requirement that an applicant submit a Material Safety Data Sheet to the North Carolina Pesticide Board in connection with registration of a pesticide.

This act became effective June 23, 2011, and applies to applications for registration or renewals of registration filed on or after that date. (WGR)

Amend Solid Waste Management Facility Financial Assurance Requirements

S.L. 2011-262 (HB 209). See **Environment and Natural Resources**.

Transfer Emergency Foreclosure Program to the Housing Finance Agency

S.L. 2011-288 (HB 484) does all of the following transfers the administration of the State Home Foreclosure Prevention Project and Fund (Fund) to the North Carolina Housing Finance Agency, and:

- Directs the Commissioner of Banks to deposit fees received from mortgage servicers into a separate account and to transfer receipts to the Fund on at least a monthly basis.
- Directs monies remaining in the Fund on June 30, 2011, and any money remaining in the Fund at the expiration of each subsequent fiscal year to the North Carolina Housing Trust Fund.
- Authorizes the Commissioner of Banks to establish and maintain offices as the Commissioner deems necessary, and to acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject to approval by the State Banking Commission.
- Deletes a requirement that the Housing Finance Agency comply with Article 6 and Article 7 of Chapter 146 of the General Statutes governing the acquisition of office space.

This act became effective July 1, 2011. (BK)

Public Disclosure Charitable Solicitations

S.L. 2011-319 (SB 556) requires public disclosure on collection receptacles used for the solicitation and collection of donated clothing, household items, and other items for resale. Licensed charitable entities soliciting donations must display on all sides of the collection receptacles a permanent sign disclosing the name and contact information for the organization or

sponsor. Any non-charitable entity soliciting donations by placing collection receptacles in public view must display the name and contact information for the organization or sponsor and must disclose that donations collected are not for a charitable purpose.

This act became effective October 1, 2011. (HF)

Extend Small Business Center Incubator Period

S.L. 2011-331 (SB 287) amends the Umstead Act to extend the period of time for which community college small business incubators may offer services to new business ventures. The act allows small business incubators at community colleges to offer services to qualified new business ventures for a period of up to 48 months. Small business incubators are sites for new business ventures that are located within a community college's service area and that are not likely to succeed without the support and assistance provided by the college.

This act became effective June 27, 2011. (DC)

Amend Article 13 of Business Corporation Act

S.L. 2011-347 (SB 457) amends Article 13 of North Carolina's Business Corporation Act (Dissenter's Rights) to more closely conform with provisions of the Model Business Corporation Act as drafted by a committee of the American Bar Association.

The act deletes all reference to the terms "dissent" or "dissenter" and substitutes the more accurate term "appraisal rights." A shareholder's right to an appraisal and to obtain the fair value of shares is triggered by any one of a number of enumerated corporate actions. The act limits appraisal rights to voting shares. However, shares held on the effective date of this act that did not entitle the shareholder to vote on a merger, share exchange, or disposition of assets, are entitled to appraisal rights to the same extent as if the shares did entitle the shareholder to vote. A shareholder who is entitled to vote on a specified corporate action and who wishes to assert appraisal rights must deliver a written notice of intent to demand payment before the vote is taken and must not vote in favor of the proposed action. Payment of the corporation's estimate of fair value is due within 30 days after the shareholder submits the form. The payment must be accompanied by specified financial information. A shareholder who is dissatisfied with the payment may, within 30 days after receiving payment, notify the corporation of the shareholder's estimate of the fair value and demand payment of that estimated amount plus interest. The legality of a corporate action may not be contested by a shareholder after it has been approved, unless the action was:

- Unauthorized by law, the articles of incorporation or bylaws, or by resolution of the board.
- A result of fraud.
- An interested transaction.
- Approved by less than unanimous consent under certain circumstances.

This act became effective October 1, 2011. (KCB)

Studies

Task Force on Fraud Against Older Adults

S.L. 2011-189 (SB 449) requires the Consumer Protection Division of the Department of Justice to coordinate a Task Force on Fraud Against Older Adults (Task Force). The act provides for the participation of various State agencies and other entities on the Task Force, and directs it to examine issues including:

- Identifying, clarifying, and strengthening laws to provide older adults a broader system of protection against fraud and abuse.
- Establishing a statewide system to enable reporting on incidents of fraud and mistreatment of older adults.
- Identifying opportunities for partnership among the Banking Commission, the financial management industry, and law enforcement agencies to prevent fraud against older adults.
- Granting the Attorney General authority to initiate prosecutions for fraud against older adults.

An interim report from the Task Force to the North Carolina Study Commission on Aging was due on or before November 1, 2011; the final report is due on or before October 1, 2012.

This act became effective June 23, 2011. (KG)

Study Modernization of Banking Laws

S.L. 2011-353 (SB 555) establishes the Joint Legislative Study Commission on the Modernization of Banking Laws. The Commission is directed to determine whether and to what extent North Carolina's banking laws should be updated. The Commission also may study other issues related to the banking laws. The act provides for the appointment of 14 Commission members, including members of the House and Senate, representatives of State-chartered banks, and representatives of consumer advocacy organizations.

The Commission must report results of the study to the 2012 Regular Session of the 2011 General Assembly. The Commission terminates upon the filing of the report or on May 1, 2012, whichever occurs first.

This act became effective June 27, 2011. (WGR)

Chapter 6
Constitution and Elections

Denise Huntley Adams (DHA), Erika Churchill (EC), Kara McCraw (KM), Susan L. Sitze (SLS)

Note: Legislation affecting voting cannot be implemented until it has received approval under Section 5 of the Voting Rights Act of 1965. Approval most commonly is 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.

Enacted Legislation

Elections

County Administration of Municipal Elections

S.L. 2011-31 (HB 21) repeals the statutes related to municipal boards of elections, and requires county boards of elections to register voters and conduct all elections in municipalities and special districts.

This act became effective April 7, 2011, and has received federal preclearance from the United States Department of Justice. (DHA)

Uniform Military and Overseas Voters Act

S.L. 2011-182 (HB 514) repeals State law providing for military and overseas absentee voting and enacts the Uniform Military and Overseas Voters Act, based on a model act approved by the Uniform Law Commission.

The act defines "covered voters" to include uniformed service members and their families and United States citizens residing outside the country. The voter registration and absentee voting provisions of the act apply to primary, general, and special elections for federal or State office, State ballot measures, and local government elections and ballot measures when absentee balloting is allowed in those races.

The act establishes duties of the State Board of Elections for military and overseas absentee voting, including developing electronic transmission systems to permit covered voters to apply for and receive registration materials and ballots and to determine receipt and status of materials. The State Board of Elections also must develop standardized absentee-voting materials.

Covered voters may use federal postcard applications for registration and federal write-in absentee ballots to vote for all offices and ballot measures, and may use those materials as a simultaneous application for a military-overseas ballot. Applications for registration must be received by 5:00 p.m. on the day before the election.

County boards of elections must transmit ballots to covered voters no later than 60 days before Statewide general elections and 30 days before a municipal election. For second primaries which include a federal office, a ballot must be transmitted 45 days before the election, and for all other second primaries a ballot must be transmitted as soon as practicable. Ballots must be transmitted 50 days before any other election.

Military-overseas ballots must be received by the county board of elections by the close of polls, or be submitted by the covered voter for transmission by 12:01 a.m. on Election Day, to

be valid. Valid military-overseas ballots timely cast must be counted if delivered by the close of business on the business day before the latest deadline for completing the county canvass. County boards of elections are permitted to begin counting military and overseas ballots at 9:00 a.m. on Election Day.

The act provides that second primaries which include a federal office must be conducted ten weeks after the first primary.

This act becomes effective January 1, 2012, and has received federal preclearance from the United States Department of Justice. (KM)

No Run for Two Offices/Same General Elections

S.L. 2011-214 (SB 356) limits an individual from running on the same general election ballot for more than one office, regardless of the method by which that individual gained access to the ballot. An individual's name may be on a ballot twice only if one of the offices is for the remainder of the unexpired term of that office.

This act becomes effective January 1, 2012, and has received federal preclearance from the United States Department of Justice. (DHA)

Clarify Use of Position

S.L. 2011-393 (SB 620) clarifies that the public position of a legislator or a public servant may be disclosed in an agenda or another document related to a meeting, conference, or similar event when the disclosure could be reasonably considered material. The act also modifies the frequency and reporting requirements of reports filed by lobbyist principals regarding payment to lobbyists. Beginning October 1, 2011, each lobbyist principal must annually file a cumulative combined total of all payments for lobbying and other activities made by the principal to all lobbyists registered for that lobbyist principal.

This act became effective October 1, 2011, and applies to reports filed on or after that date. (DHA)

Constitutional Amendment

Defense of Marriage

S.L. 2011-409 (SB 514) proposes to amend the North Carolina Constitution by adding the following new section:

"Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts."

Like all proposed amendments to the State Constitution, this is subject to a statewide referendum. The act sets the referendum on the date of the first primary in 2012. The date of the referendum must be precleared by the United States Department of Justice.

The question placed on the ballot will be for or against a "constitutional amendment to provide that marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State." If a majority of the votes cast on the question are in favor of the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment among the permanent records. The amendment will become effective upon certification by the State Board of Elections.

This act became effective September 14, 2011. (SLS)

Redistricting

After each federal decennial census, the General Assembly redraws the district lines for the United States House of Representatives districts, the North Carolina State Senate districts, and the North Carolina State House of Representatives districts. The census was taken on April 1, 2010, and the results released in early 2011. According to the Census Bureau, the population of North Carolina grew approximately 18.5% between 2000 and 2010. The census also revealed that the population growth was not evenly distributed throughout North Carolina. The growth and redistribution of people across the State resulted in the redrawing of the district lines by the General Assembly for the United States House of Representatives, the North Carolina Senate, and the North Carolina House of Representatives. The changes are outlined briefly in the tables below. As used in the charts, "VTD" is a voter tabulation district and is the functional equivalent of a voting precinct. Maps and detailed information are available from the Research Division, and on the General Assembly website (http://www.ncleg.net/Redistricting/).

Before the plans may be used in an election, each plan must be precleared by the United States Department of Justice, due to the fact the redrawn lines affect elections in the 40 counties in North Carolina covered by Section 5 of the Voting Rights Act. (DHA) (KM)

Rucho Senate 2

S.L. 2011-402 (SB 455). The following chart compares S.L. 2011-402 to the current law.

	S.L. 2003-434 (HB 3) Current Law	S.L. 2011-402 (SB 455) Awaiting Preclearance
No. of Districts	50	50
Ideal District Population	160,986	190,710
No. of Majority Minority Districts*	1	9
No. of Split Counties	11	18
No. of Split VTDs	N/A	257

*Denotes Majority Black Total Population (50% or more)

Rucho-Lewis Congress 3

S.L. 2011-403 (SB 453). The following chart compares S.L. 2011-403 to the current law.

	S.L. 2001-479 (HB 32) Current Law	S.L. 2011-403 (SB 453) Awaiting Preclearance
No. of Districts	13	13
Ideal District Population	619,178	733,499
No. of Majority Minority Districts*	1	2
No. of Split Counties	28	40
No. of Split VTDs	N/A	68

*Denotes Majority Black Total Population (50% or more)

Lewis Dollar Dockham 3

S.L. 2011-404 (HB 937). The following chart compares S.L. 2011-403 to the current law.

	S.L. 2009-78 (HB 1621) Current Law	S.L. 2011-404 (HB 937) Awaiting Preclearance
No. of Districts	120	120
Ideal District Population	67,078	79,462
No. of Majority Minority Districts*	11	23
No. of Split Counties	39	40
No. of Split VTDs	N/A	395

*Denotes Majority Black Total Population (50% or more)

Vetoed Legislation

Restore Confidence in Government

HB 351. See **Vetoed Legislation.**

Chapter 7
Courts, Justice, and Corrections

Brenda Carter (BC), Erika Churchill (EC), Jan Paul (JP), Howard Alan Pell (HAP),
Kelly Quick (KQ), Wendy Graf Ray (WGR), Susan L. Sitze (SLS)

Enacted Legislation

Exclusionary Rule/Good Faith Exception

S.L. 2011-6 (HB 3) creates an exception to the rule that provides that evidence is to be excluded at trial if it was obtained in substantial violation of the provisions of the Criminal Procedure Act (Chapter 15A of the General Statutes). The new law states that evidence that would have been excluded otherwise due to a substantial violation of a statute must not be excluded if the person committing the violation acted under an objectively reasonable, good faith belief that the actions that constituted the violation were lawful. The court must make findings of fact and conclusions of law as part of its determination of whether evidence should be suppressed, and these must be included in the record.

The United States Supreme Court has applied a good faith exception to the exclusion of evidence obtained in violation of the United States Constitution. However, in *State v. Carter* (1988) the North Carolina Supreme Court held there is no "good faith" exception to the exclusion of evidence taken in violation of the North Carolina Constitution. The act includes a request by the General Assembly for the North Carolina Supreme Court to overrule its holding in *Carter* and to apply the exception concerning good faith violations of the federal constitution to good faith violations of the State constitution.

This act became effective March 18, 2011, and applies to all hearings or trials commenced on or after July 1, 2011. (HAP)

Forensic Sciences Act

S.L. 2011-19 (HB 27), as amended by Sections 8 and 9 of S.L. 2011-307 (SB 684), enacts laws relating to the testing, examination, and admissibility of forensic evidence; provides measures for the certification and oversight of forensic science professionals; and creates an advisory board to review crime lab operations. The act:

- Creates the Forensic Science Advisory Board to review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board serves as an advisory board within the Department of Justice and consists of 16 members, including the State Crime Laboratory Director, the Chief Medical Examiner, and other experts in the forensic science field.
- Requires the State Bureau of Investigation to encourage and seek collaborative opportunities and grant funds for research programs on human observer bias and sources of human error in forensic examinations, partnering with the university system or independent, nationally recognized forensic institutions whenever possible.
- Requires that forensic science professionals at the State Crime Laboratory be certified consistent with International Organization for Standardization (ISO) standards within 18 months of the date the analyst becomes eligible to seek certification, or by June 1, 2012, whichever occurs later, unless certification is not available. It also requires that all forensic science professionals have access to the certification process.
- Renames the State Bureau of Investigation Crime Laboratory as the North Carolina State Crime Laboratory.

- Creates the position of ombudsman in the North Carolina State Crime Laboratory within the North Carolina Department of Justice. The primary purpose of the position is to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure that all Laboratory practices are consistent with State and federal law, best forensic law practices, and are in the best interests of justice. This provision became effective July 1, 2011.
- Clarifies statutes regarding the admissibility of forensic analyses in criminal proceedings. The act provides for the admissibility of forensic evidence at trial if performed by any laboratory (instead of a specifically named laboratory) accredited by an accrediting body that demands conformance to forensic specific requirements, and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing. Forensic labs, other than the State Crime Laboratory, have until October 1, 2012, to be accredited.
- Clarifies the current discovery requirement that, when providing the complete investigative file, the State must produce any data, calculations, or writings of any kind including, but not limited to, preliminary test or screening results and bench notes.
- Creates a Class H felony for the willful omission or misrepresentation of evidence or information required to be disclosed under the law. The felony offense applies to information such as lab reports, lab notes, law enforcement records, and other information directly relating to the investigation of the crime. The act also provides a Class 1 misdemeanor for the willful omission or misrepresentation of evidence or information required to be disclosed under any other provision of the statute not covered by the felony provision.
- Amends statutory language to clarify that State Crime Laboratory personnel serve the public and the criminal justice system, as opposed to solely the prosecutor.

This act became effective June 27, 2011, except as otherwise noted. (HAP)

Clarify Definition/Judicial District/State Bar

S.L. 2011-28 (SB 18) amends the definition of the term "judicial districts" for purposes of the statutes governing the North Carolina State Bar, to establish the High Point Superior Court District (18B) as a separate judicial district entitled to representation on the State Bar Council, bringing the number of seats on that Council to 45.

The act also makes a conforming change to amend the definition of "judicial district" so that the change to the composition of the State Bar would not have an impact on the way nominees are currently selected for district court vacancies. All members of the State Bar who reside in a judicial district are eligible to participate in the selection of nominees to fill a vacancy in the office of district court judge.

This act became effective April 7, 2011. (EC)

Juror Qualifications/Disabilities

S.L. 2011-42 (HB 234) eliminates the qualification requiring that potential jurors must be able to hear and adds disability as a basis for excusal, deferral, or exemption from jury duty. The act provides that a person making a request for excusal, deferral, or exemption due to disability may do so by filing a signed statement with explanation. The statement is to be filed with the chief district court judge or his or her designee at any time five days before the date of appearance. The act also provides that the court may request submittal of medical documentation of the disability.

This act became effective July 1, 2011. (KQ)

Amend Conditions of Probation

S.L. 2011-62 (HB 270) amends the laws establishing regular and special conditions of probation.

The act makes the following changes which pertain to the regular conditions of probation, and apply only to offenders on supervised probation. The act:

- Requires the probationer to remain accessible to the probation officer by making their whereabouts known to the officer and not to leave the county of residence or the State of North Carolina without written permission from the court or the probation officer.
- Deletes the provision requiring the probationer to visit a Division of Prisons facility with their probation officer.
- Requires the probationer to supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol for purposes directly related to the probation supervision, when instructed by the probation officer. The probationer may be required to pay the costs of the analysis if the results of the testing are positive.

The act amends special conditions of probation to allow the court to require that the offender:

- Not knowingly associate with any known gang members or be present at places where gang activity is known to occur.
- Not wear clothes, jewelry, signs, symbols, or any paraphernalia identified with or used by a gang.
- Not initiate or participate in any contact with any person who is a witness against or victim of the defendant or the defendant's gang.
- Participate in any Project Safe Neighborhood activities as directed by the probation officer.

Additionally, the act repeals the statute that provided for tolling any period of probation during the pendency of additional charges.

This act became effective December 1, 2011, and applies to persons placed on probation on or after that date. (SLS)

Annual Evaluation of Community Programs

S.L. 2011-145, Sec. 17.2 (HB 200, Sec. 17.2) directs the Department of Juvenile Justice and Delinquency Prevention to conduct an annual evaluation of the wilderness camp programs and of multipurpose group homes. The Department must consider whether participation in each program results in a reduction of court involvement among juveniles and identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act (S.L. 1998-202). The Department must report the results of its evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; the chairs of the Senate and House Appropriations Committees; and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year.

This section became effective July 1, 2011. (KQ)

Department of Juvenile Justice and Delinquency Prevention and Department of Correction Joint Effort to Make In-Home Monitoring Available as Alternative to Detention for Juveniles

S.L. 2011-145, Sec. 17.6 (HB 200, Sec. 17.6) directs the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The Departments must assess the monitoring needs for both the adult and juvenile systems, identify the contracts the Department of Correction currently has for monitoring services, and determine which contracts, if any, may be negotiated or renegotiated to cover monitoring services for both the adult and juvenile systems. The Departments also may identify other effective options to increase the use of in-home monitoring as an alternative to detention for juveniles. The Departments must report to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety; the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; and the Fiscal Research Division regarding their findings and recommendations by September 1, 2011.

This section became effective July 1, 2011. (KQ)

Youth Development Center Annual Report

S.L. 2011-145, Sec. 17.8 (HB 200, Sec. 17.8) directs the Department of Juvenile Justice and Delinquency Prevention to report annually on the Youth Development Center population, staffing, and capacity in the preceding fiscal year. The report must be submitted to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety; the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; and the Fiscal Research Division by October 1 of each year.

This section became effective July 1, 2011. (KQ)

Parole Eligibility Report/Mutual Agreement Parole Program/ Medical Release Program

S.L. 2011-145, Sec. 18.7 (HB 200, Sec. 18.7) directs the Post-Release Supervision and Parole Commission, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, to analyze the amount of time each inmate eligible for parole on or before July 1, 2012, has served, compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission must report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; the chairs of the House and Senate Appropriations Committees; and the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2012. The report must include the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission must reinitiate the parole review process for each offender who has served more time than that person would have served under Structured Sentencing. This section also requires that the Department of Correction and the Post-Release Supervision and Parole Commission report by March 1 of each year to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program; the number completing the program and being paroled; the number who enrolled but were terminated from the program; and the number of inmates proposed for release, considered for release, and granted release,

under the statute providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric.

This section became effective July 1, 2011. (KQ)

Inmate Medical Cost Containment

S.L. 2011-145, Sec. 18.10 (HB 200, Sec. 18.10), as amended by S.L. 2011-991, Sec. 42.1 (HB 22, Sec. 42.1), requires the Department of Correction (Department) to reimburse providers and facilities administering approved inmate medical services outside the correctional facility at a rate of 70% of the provider's then-current prevailing charge or at 2 times the then-current Medicaid rate for any given service, whichever is less. This section does not apply to vendors providing services that are not billed on a fee-for-service basis, such as temporary staffing. This section does not preclude the Department from contracting with a provider for services at rates that provide greater documentable cost avoidance for the State than do the rates described in this section, or at rates that may be less favorable to the State but that will ensure continued access to care.

This section requires the Department to contain inmate medical costs by making use of its own hospital and health care facilities. It also directs the Department to make reasonable efforts to make use of hospitals or other providers with which it has a contract or, if none is reasonably available, hospitals with available capacity. The Department must make reasonable efforts to equitably distribute inmates among all hospitals or other appropriate health care facilities and must continue efforts to ensure that, on an annual basis beginning in the 2011-2012 fiscal year, no more than 9% of all inmates requiring hospitalization are admitted at each hospital.

This section became effective July 1, 2011. (KQ)

Report on Probation and Parole Caseloads

S.L. 2011-145, Sec. 18.13 (HB 200, Sec. 18.13) requires the Department of Correction (Department) to report annually on caseload averages for probation and parole officers. The report must be submitted by March 1 of each year to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department is directed to conduct a study of probation/parole officer workloads to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of offenders supervised and the time required to supervise those offenders, and to report the results of the study to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2013. The Department is directed to report annually on issues related to GPS-monitored sex offenders. The report must be submitted by March 1 of each year to the chairs of the House and Senate Appropriations Committees; the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety; and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

This section became effective July 1, 2011. (KQ)

Justice Reinvestment Act of 2011

S.L. 2011-192 (HB 642), as amended by S.L. 2011-412 (HB 335), revises State criminal laws, criminal procedure laws, and probation statutes. The act is based upon recommendations of the Council of State Governments Justice Center, working in conjunction with State agencies and officials. Known as the Justice Reinvestment Project, the working group received input from criminal justice practitioners and stakeholders from around the State, including superior and

district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates, and probation officers. The goal of their work was to develop a statewide policy framework to reduce spending on corrections and reinvest in strategies to increase public safety.

PART I. – Strengthen Probation Supervision.

- Redefines community punishment and intermediate punishment under the Structured Sentencing Act, and authorizes a sentencing court to impose one or more of the statutorily listed conditions. The change broadens the court's discretion by increasing the scope of probation conditions which may be ordered by the court.
- Enacts a new subsection listing probation conditions applicable to community or intermediate punishments. In addition to any special conditions of probation that may be ordered, the court may impose one or more of the following:
  - House arrest with electronic monitoring.
  - Special probation.
  - Community service.
  - Periods of confinement in a local confinement facility (up to six days per month, limited to consecutive two- or three-day periods, in any three months of the period of probation). When a defendant is on probation for multiple judgments, confinement periods imposed must run concurrently and may total no more than six days per month.
  - Substance abuse assessment, monitoring, or treatment.
  - Participation in an educational or vocational skills development program, including an evidence-based program.
  - Satellite monitoring based on sex offender statutes, if authorized by statute.
- Amends the statute delegating authority to the Department of Correction (Department) to require that offenders sentenced to community punishment and intermediate punishment comply with certain conditions. The Department must establish guidelines and procedures for imposition of the conditions, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights. The use of any of the conditions does not prevent the Department from utilizing the statutes which provide for revocation of probation.
- Requires the Department to use a validated risk assessment instrument in assessing each probationer for the purpose of determining:
  - The offender's risk of reoffending.
  - An appropriate supervision level based upon the determined risk of reoffending and the offender's criminogenic needs. Criminogenic needs generally include such things as who an offender hangs around with, the offenders' attitudes and values, lack of problem solving skills, substance use, employment status, and other attributes directly linked to criminal behavior.
- Amends the statute setting forth the Department's caseload goals. The act uses the characterization of "high or moderate risk of re-arrest" offenders in lieu of offenders sentenced to community or intermediate punishments. The goal states that a probation officer should have an average of no more than 60 "high or moderate risk of re-arrest" offenders.

Effective Date. – Part I of the act became effective December 1, 2011, and applies to persons placed on probation based on offenses which occur on or after December 1, 2011. However, this section and the provisions of this act requiring the Department to adopt a risk assessment instrument became effective June 23, 2011.

PART II. – Post Release Supervision.

- Amends the statutes to include all felons in the post-release supervision program, except Class A and Class B1 prisoners sentenced to life imprisonment without parole. Previously, only Class B1 (non-life without parole) through Class E felons were included.
- Amends the post-release supervision release date, setting it at 12 months (was 9 months) before the maximum imposed prison term for Class B1 through Class E felons. For Class F through Class I felons, the post-supervision release date is set at 9 months before the maximum imposed prison term.
- Amends conditions of probation that can result in a revocation of post-release supervision to include a "non-absconding" condition. A probationer who willfully avoids supervision, or who willfully makes his or her whereabouts unknown to probation authorities, is considered to have absconded.
- Amends the statute authorizing imprisonment for violation of post-release supervision conditions. A person required to register on the sex offender registry, or a person who commits a new offense or absconds, is returned to prison to complete the maximum imposed term. Other felons are returned for three months, and may be returned for three months on two subsequent occasions. If the supervisee is a Class B1 through Class E felon, and has completed three periods of confinement of three months each, then a fourth violation can result in required completion of the maximum imposed prison term.

Effective Date. – Part II of this act became effective December 1, 2011, and applies to offenses committed on or after that date.

PART III. – Breaking and Entering, Status Offense/Habitual Felon Statute, Penalty Change.

- Creates a new status offense for habitual breaking and entering and authorizes the district attorney to charge the offense in his or her discretion. The offense is punishable as a Class E felony. A defendant who has one or more prior convictions for any of the listed breaking and entering offenses is subject to separate indictments for the offense upon which he or she was arrested and for the habitual breaking and entering felony charge. For purposes of determining the number of prior convictions, a person with more than one felony conviction prior to the age of 18 will be considered to have only one prior felony conviction.
- Changes the penalty for a conviction under the State's Habitual Felon Statute and authorizes the district attorney to charge the offense in his or her discretion. The felon must be sentenced at a level that is four levels higher than the underlying felony for which the person was convicted, with a maximum sentence at the Class C felony level. Prior law set the penalty as a Class C felony.

Effective Date. – Part III of this act became effective December 1, 2011, and applies to any offense that occurs on or after that date, and that is the principal offense for a charge of the status offense of either habitual breaking and entering or habitual felon.

Part IV. – Limit Time/Certain Violations of Probation.

- Adds a duty not to abscond to the regular conditions of probation, which are applicable to all offenders placed on probation. This provision became effective December 1, 2011, and applies to offenses committed on or after that date.
- Provides that the court may not revoke probation for violations of conditions of probation other than for a new criminal offense or for absconding (except as provided below), but the court may impose imprisonment for the other types of violations.
- Provides that if a probationer commits a violation of a condition of probation (<u>other than</u> a new crime or absconding, which can result in probation revocation), the court may impose a 90-day period of confinement if the person is on probation for a felony, or up to 90 days of confinement if the person is on probation for a

misdemeanor. The defendant may receive only two periods of confinement under this subsection. The act specifies how credits for confinement while awaiting a hearing are allocated.

Effective Date. – Except as noted above, Part IV of this act became effective December 1, 2011, and applies to probation violations occurring on or after that date.

PART V. – Diversion Program/Felony Drug Possession/Advanced Supervised Release Program.

- Amends the controlled substance diversion program to include all first-time felony drug possession charges. The program provides for dismissal of charges upon successful completion of probation. Previously, the program was discretionary (court determined whether the defendant could be enrolled), and allowed only drug offense misdemeanants and persons convicted of felony possession of less than one gram of cocaine. The act also amends statutes providing for expunction of first-time drug possession offenses committed by persons under the age of 21.
- Creates a procedure for a defendant, through completion of designated "risk reduction incentives", to be released on post-release supervision in advance of the term imposed under Structured Sentencing. The section:
  - Designates who is an eligible defendant. Eligibility is based upon the defendant's offense and prior record level.
  - Authorizes the Department to create incentives consisting of treatment, education, and rehabilitative programs designed to reduce the likelihood that the defendant will reoffend.
  - Provides that the court, without objection by the prosecutor, may order that the Department admit the defendant to the Advanced Supervised Release (ASR) program, and that the Department may admit only those offenders ordered into the program by the court. The court will first adjudge and impose an authorized sentence for the offense class, pursuant to the Structured Sentencing Act, which will include a minimum and maximum imposed term.
  - Provides for an ASR date, which is the minimum mitigated sentence for the offense at the offender's assigned prior record level. If the court utilizes the mitigated range in determining the sentence under structured sentencing, then the ASR date is 80% of the minimum term imposed by the court.
  - Provides that a prisoner released on the ASR date will be placed on post-release supervision. If the prisoner is returned to prison three times (a total of nine months), a subsequent violation will result in revocation of post-release status, and the prisoner must serve the remainder of the maximum imposed sentence.

Effective Date. – Part V becomes effective January 1, 2012, and applies to persons entering a plea or found guilty of an offense on or after that date.

PART VI. – Refocus Criminal Justice Partnership Program.

- Repeals the Criminal Justice Partnership Program (CJPP), eliminates local CJPP boards, and creates a new Article provides for a program called "Treatment for Effective Community Supervision" and does the following:
- Establishes eligibility criteria for offenders, and identifies the priority population for funded programs as persons convicted of felony drug offenses, who also have a high likelihood of reoffending and have a high to moderate need for substance abuse treatment.
- Provides for duties of the Department, including formulation of a recidivism reduction plan.
- Requires the Department to report annually on funds expended by contract and to provide an analysis of the participants and services.
- Establishes a State Community Corrections Advisory Board with the following duties and responsibilities:

- Review the criteria for monitoring and evaluating community-based corrections programs.
- Recommend community-based corrections program priorities.
- Review minimum program standards, policies, and rules for community-based corrections programs.
- Review the evaluation of programs.
- Requires the North Carolina Sentencing Policy and Advisory Commission to report on recidivism rates for offenders on probation, parole, and post-release supervision who are program participants. The report is to be submitted by April 30 of each even-numbered year to the General Assembly and the Governor.
- Establishes types of programs eligible for funding, to include substance abuse treatment services and cognitive behavioral programming.

Effective Date. – Part VI of this act became effective July 1, 2011. The act authorizes the Department of Correction to enter into contracts with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

PART VII. – Misdemeanants to Serve Sentences in Jail.

- Authorizes the Department of Correction (Department) to enter into voluntary agreements with counties, to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days. Costs of housing these prisoners, including care, supervision, transportation, medical, and any other related costs, are to be covered by State funds and not imposed as local costs. The agreements are not applicable to misdemeanants sentenced for violations of impaired driving laws. The act also states the intent of the General Assembly that the Department contract with the North Carolina Sheriffs' Association to provide a service identifying space in local confinement facilities available for housing eligible misdemeanants.
- Provides that sentences requiring confinement for more than 180 days must be served in the custody of the Department; removes a provision that allowed sheriffs or the county board of commissioners to request the presiding judge to sentence felons to local confinement.
- Requires the North Carolina Sheriffs' Association, Inc., in consultation with the Department, to develop a plan for the Statewide Misdemeanant Confinement Program by September 1, 2011.
- Creates the Statewide Misdemeanant Confinement Fund, a non-reverting fund established within the Department. Moneys in the Fund may be used for the following:
  - Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.
  - Reimbursements to the Department for the cost of housing misdemeanants transferred to the Department, including the care, supervision, and transportation of those misdemeanants.
  - Payment to the Sheriffs' Association for administrative and operating expenses.
  - Payment to the Department for administrative and operating expenses.
- Provides that 10% of monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund is to be transferred on a monthly basis to the Sheriffs' Association for support of the Program and for administrative and operating expenses of the Association and its staff.
- Provides that 1% of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund is to be transferred on a monthly basis to the General Fund to be allocated to the Department for administrative and operating expenses for the Program.

- Requires the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction to jointly conduct ongoing evaluations regarding implementation of this act.
- Requires the North Carolina Sheriffs' Association to report on implementation of the program by October 1, 2011, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and to report thereafter as requested by the Committee. The report must include relevant information collected monthly by the Sheriffs' Association regarding jail capacity and population in each county.
- Provides effective dates for court fees to conform to provisions in the Appropriations Act, and excludes costs and fees designated for remission to the Statewide Misdemeanant Confinement Fund from the collection assistance fee which supports the General Court of Justice.
- Amends the Appropriations Act to exempt the Statewide Misdemeanant Confinement Fund from a collection assistance fee normally allocated from court fees and designated for support of the General Court of Justice.

Effective Date. – Provisions in Part VII of this act relating to the fund and planning and contracting for the Statewide Misdemeanant Confinement Program became effective July 1, 2011; the remaining provisions become effective January 1, 2012.

PART VIII. – Annual Report/Sentencing Commission Exemption.

- Requires the North Carolina Sentencing and Policy Advisory Commission and the Department to report on implementation and results of this act to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by April 15, 2012. Subsequent reports must be made annually by April 15 of each year.
- Provides the Sentencing Commission is not required to pay fees to the Department of Justice for information necessary to fulfilling its statutory obligations.

Part IX. – Title. Provides for the title of the act: The Justice Reinvestment Act of 2011.

Except as otherwise specified above, this act became effective June 23, 2011. (HAP)

Realign Wake Superior Court Districts

S.L. 2011-203 (HB 112) realigns the Superior Court Districts in Wake County to create six single member districts, as instructed by the courts in *Blankenship v. Bartlett*. The act designates which current sitting judges are assigned to which districts for election purposes.

This act becomes effective January 1, 2013, and applies to the 2012 election. (EC)

Amend Criminal Discovery Laws

S.L. 2011-250 (HB 408) amends the Criminal Procedure Act relating to discovery in Superior Court. On motion of the defendant, the court must order the State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation or prosecution of a case. A file includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant.

The prosecutor is required to give notice to the defendant of the State's lay and expert witnesses. Any entity having information that must be disclosed to the prosecution for further disclosure to the defendant, must "timely" provide the prosecutor's office with a complete copy of its files.

The act defines a Crime Stoppers organization, and provides that unless the court orders otherwise, any person who has given information to Crime Stoppers may remain anonymous, and information contained in the Victim Impact Statement need not be disclosed by the State.

The act directs the Administrative Office of the Courts and Indigent Defense Services to develop standardized fee scales for payment of defense experts and private investigators compensated by the State.

Finally, the law imposes a presumption of good faith on the part of prosecutors and their staff, if they make a reasonably diligent inquiry of law enforcement and investigatory agencies and disclose the required materials. The act requires a court to make specific findings to support the imposition of sanctions on any party for failing to comply with discovery procedures.

This act became effective December 1, 2011, and applies to cases pending on that date and cases filed on or after that date. (JP)

Substance Abuse Treatment

S.L. 2011-254 (HB 629) requires defendants ordered to submit to residential treatment at the Black Mountain Substance Abuse Treatment Center for Women to undergo screening to determine chemical dependency. This screening is the same as that required for male defendants ordered to participate in the Drug Alcohol Recovery Treatment (DART) program. A defendant also may be required to participate in medical or psychiatric treatment ordered by the court for the duration of treatment, regardless of the length of suspended sentence imposed.

Additionally, the act provides that the North Carolina Substance Abuse Professional Practice Board may adopt any rules necessary to carry out the purpose of the North Carolina Substance Abuse Professional Practice Act, including rules related to the approval of substance abuse specialty curricula developed by a school, college, or university.

The provision of this act relating to the completion of court-ordered medical or psychiatric treatment became effective December 1, 2011. The remainder of this act became effective June 23, 2011. (SLS)

Certificate of Relief Act

S.L. 2011-265 (HB 641) establishes a Certificate of Relief to assist individuals convicted of less serious crimes in dealing with collateral sanctions and disqualifications resulting from the criminal conviction.

A person who has been convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation, is eligible to petition for a Certificate of Relief. The court may issue the Certificate of Relief if, after reviewing the petition, the individual's criminal history, any information provided by a victim or the district attorney, and any other relevant evidence, it finds the petitioner has established by a preponderance of the evidence all of the following:

- 12 months have passed since the person completed the sentence.
- The person is engaged in, or seeking to engage in, a lawful occupation or activity.
- The person has complied with all requirements of the sentence.
- The person is not in violation of the terms of any criminal sentence, or any failure to comply is justified, excused, involuntary, or insubstantial.
- A criminal charge is not pending against the person.
- Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

If granted, the Certificate of Relief relieves all sanctions specifically required by law, except for the following:

- Requirements imposed by, and any statutory requirements or prohibition imposed as a result of, registration as a sex offender.
- Prohibitions on possession of firearms.
- Motor vehicle license suspension, revocation, limitation, or ineligibility.
- Ineligibility for certification as a law enforcement officer.
- Ineligibility for employment as a corrections or probation officer, or as a prosecutor or investigator in a district attorney's office.

If granted, the Certificate of Relief does not automatically relieve disqualifications the law allows but does not require. However, a Certificate of Relief may be considered favorably in determining whether a conviction should result in disqualification.

Certificates of Relief may be issued with restrictions and may specifically state sanctions or disqualifications from which relief has not been granted. A Certificate of Relief does not result in expunction or pardon, and may be revoked or modified upon motion of the court or the district attorney. The district attorney and the victim may appear and be heard at any hearing related to the issuance, modification, or revocation of a Certificate of Relief.

Reliance on a Certificate of Relief in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person for whom the Certificate of Relief was issued is a bar in a judicial or administrative proceeding alleging negligence, if the person against whom the proceeding is brought knew of the Certificate of Relief at the time of the alleged negligence.

This act became effective December 1, 2011. (SLS)

Allow Juvenile Record/Risk Determination/Bond

S.L. 2011-277 (SB 135) permits the use of a juvenile record in making the risk determination for establishing a bond under the laws pertaining to the juvenile code. The provision applies if the defendant in a criminal proceeding involving a Class A1 misdemeanor or a felony was less than 21 years of age at the time of the offense.

This act became effective December 1, 2011, and applies to pretrial release, plea negotiating decisions, and plea acceptance decisions on or after that date. (BC)

Expunge Nonviolent Offense by Minor

S.L. 2011-278 (SB 397) provides that a youthful offender's criminal record may be expunged of nonviolent felonies; however, the Criminal Justice Education and Training Standards Commission and the Sheriffs' Education and Training Standards Commission may access records of the expunction. The act applies to first offenders under 18 years of age at the time of the offense. It does not apply to Class A through G felonies, sex-related or stalking offenses, drug offenses involving methamphetamine, heroin, or possession with intent to sell or deliver or sell and deliver cocaine, or offenses involving a commercial motor vehicle. The person must perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction. The person also must have obtained a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

This act became effective December 1, 2011. (BC)

Certificates Under Seal in Indigent Cases/Fee

S.L. 2011-285 (HB 243) waives the cost of certifying a court document as a true and accurate copy of the original document on file, if the request is made by an attorney appointed or under contract with the Office of Indigent Defense Services to represent an indigent person at State expense. The act applies to requests made during the term of, and in connection with, the appointed case or the contract.

This act became effective July 1, 2011, and applies to fees assessed or collected on or after that date. (SLS)

Juvenile Code Revisions

S.L. 2011-295 (HB 382) amends the North Carolina Juvenile Code as it pertains to abuse, neglect, and dependency, as recommended by the Juvenile Code Revision Subcommittee of the North Carolina Court Improvement Project. The act amends the Code in the following ways:

- Specifies the court has jurisdiction over proceedings for reinstatement of parental rights.
- Provides the court may order a placement after considering the recommendation of the county department of social services, if it is in the child's best interest.
- Modifies laws relating to the procedure for permanency planning hearings and determinations relating to reunification efforts.
- Specifies a court-appointed guardian becomes a party to the juvenile proceeding when a permanent plan of guardianship is implemented.
- Codifies the common practice of allowing the court to accept stipulations of fact for adjudication.
- Requires the court to inquire about missing parents and paternity at the dispositional hearing.
- Provides for a subsequent hearing following a dispositional order, if the order is not timely entered within the 30-day statutory time frame.
- Requires the court to make specific findings of fact regarding certain considerations at post termination of parental rights review hearing, including whether the current placement is in the juvenile's best interest.
- Amends statutes to conform to the Rules of Appellate Practice and for consistency of entering notice of appeal.
- Allows the court to order the petitioner to make a diligent search for an unknown parent, instead of the court appointing a guardian ad litem for an unknown parent to inquire about the parent's identity.
- Specifies it is the petitioner, not the clerk, who sends out the notice of hearing in a termination of parental rights proceeding.
- Clarifies only a district court judge, not a clerk, may give a respondent an extension of time to answer a termination of parental rights petition or motion.
- Specifies the rules of evidence apply to terminations of parental rights in accordance with case law.
- Specifies the rules of evidence are relaxed at the best interest determination phase of a termination of parental rights proceeding, allowing the court to consider any evidence, including hearsay evidence that the court finds to be relevant, reliable, and necessary. This provision is consistent with the rules for all dispositional juvenile hearings.
- Provides an avenue for the court to reinstate parental rights in certain situations.

This act became effective October 1, 2011, and applies to actions filed or pending on or after that date. (WGR)

Additional Name Change Requirements

S.L. 2011-303 (HB 805) requires a criminal record check and other information before the clerk of superior court may grant or deny a name change application. A person seeking a name change may apply to the clerk of superior court of the county where the person resides, and must submit all of the following information:

- The applicant's true name, county of birth, date of birth, the full name of parents as shown on the birth certificate, and the name sought to be adopted.
- The certified results of an official state and national criminal history record check.
- A sworn statement that the applicant is a resident of the county where the name change is sought, and whether or not the applicant has outstanding tax or child support obligations.

The clerk will review all the information contained in the application and determine whether there is good and sufficient reason to grant or to deny the name change.

This act became effective June 24, 2011. (BC)

Sex Offender Supervision/Forensic Amendments

S.L. 2011-307, Secs. 1 through 7 (SB 684, Secs. 1 through 7) amends the sentencing law as it applies to persons convicted of a Class B1 through E felony that is a reportable conviction subject to sex offender registration requirements. The act increases the maximum sentence for sex offenders by five years, and provides for release on post-release supervision with five years remaining on the sentence. Consequently, a person who is required to comply with post-release supervision for five years and who violates or refuses post-release supervision, will be required to serve the remainder of the five years in prison.

The act provides that willful refusal to accept post-release supervision or failure to comply with the terms of post-release supervision is criminal contempt, and may result in imprisonment. Any period of time a prisoner is not released on post-release supervision due to the prisoner's resistance to release tolls the running of the period of post-release supervision. The Post-Release Supervision and Parole Commission is specifically authorized to punish the offender by criminal contempt.

The provisions of this act relating to the extension of an offender's sentence by 60 months and release 60 months prior to the end of the sentence became effective December 1, 2011, and apply to offenses committed on or after that date. The provisions of this act relating to criminal contempt became effective June 27, 2011, and apply to willful refusals to accept post-release supervision or to comply with the terms of post-release supervision that occur on or after that date. (SLS)

Administrative Office of the Courts Collection Assistance Fee

S.L. 2011-323 (SB 131) provides that the Judicial Department's authority to collect fines, fees, and costs also includes restitution and applies to offenders not sentenced to supervised probation or active time. The act authorizes the Administrative Office of the Courts to enter into collection agreements with not only collection agencies, but also municipal or county government agencies. The agreements may provide for the collection agency to retain the assistance fee collected. Additionally, the act makes clear that the collection contracts may be applied to any amounts owed by an offender, not simply to unpaid fines, fees, and costs.

This act became effective July 1, 2011, and applies to cases adjudicated on or after that date. (SLS)

Detention Facility Requirements

S.L. 2011-324 (SB 143) modifies standards regarding the maximum number of inmates that may be housed in a dormitory of certain county detention facilities and prohibits offenders from obtaining public employee personnel records.

The act provides that each dormitory in a county detention facility may house up to 64 inmates so long as the dormitory meets specific statutory requirements. The act applies to counties with populations in excess of 300,000 people, which makes the law applicable to

detention facilities in Wake and Mecklenburg counties, as well as Cumberland, Guilford, and Forsyth counties.

The act prohibits the release of state employee personnel information to anyone in the custody of, or under the supervision of, the Department of Correction or to anyone in the custody of a local confinement facility, without a court order authorizing access to, custody of, or possession of the records. Release of certain information is allowed to an attorney investigating allegations of unlawful misconduct or abuse by a Department of Correction employee, but the attorney is prohibited from providing copies of those records to the offender without a court order.

This act became effective June 27, 2011. (SLS)

Driving While Intoxicated/Custodial Interrogation Amendments

S.L. 2011-329 (SB 241) requires that Driving While Intoxicated (DWI) sentencing be at level one if the offense occurs with one of the following persons in the vehicle:

- A child less than 18 years of age.
- A person with the mental development of a child less than 18 years of age.
- A person with a physical disability preventing unaided exit from the vehicle.

The act also requires the creation of an electronic record of an entire custodial interrogation for all custodial interrogations of juveniles in criminal investigations conducted at any place of detention. The requirement also applies to the custodial interrogation of any person in a criminal investigation conducted at any place of detention if the investigation is related to any of the following crimes: any Class A, B1, or B2 felony, and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (BC)

Electronic Monitoring Fee

S.L. 2011-378 (HB 662) authorizes counties that provide the personnel, equipment, and other costs of providing electronic monitoring as a condition of an offender's bond or pretrial release to collect a fee directly from the defendant. The amount of the fee is the actual cost of providing the electronic monitoring, or the jail fee authorized by statute, whichever is less. The fee may not be collected from a defendant determined to be indigent and entitled to court-appointed counsel.

This act became effective July 1, 2011. (KQ)

Pilot Release of Inmates to Adult Care Homes

S.L. 2011-389 (HB 678). See **Health and Human Services**.

Studies

Study Consolidation of Judicial and Prosecutorial Districts

S.L. 2011-145, Sec. 15.11 (HB 200, Sec. 15.11) creates the Study Committee on Consolidation of Judicial and Prosecutorial Districts. The Committee consists of ten members, including four members of the House of Representatives, four members of the Senate, and two members who are knowledgeable about the operations of district attorneys' offices. The Committee is directed to study the number and structure of judicial and prosecutorial districts in

the State and make recommendations to reduce those districts by consolidation to increase efficiency and improve the quality of justice. The recommendations must, to the extent deemed feasible by the Committee, provide for identical judicial and prosecutorial district plans. The Committee may make a final report to the 2012 Regular Session of the 2011 General Assembly upon its convening, and will terminate upon filing its final report or upon the convening of the 2012 Regular Session of the 2011 General Assembly, whichever is earlier.

This section became effective July 1, 2011. (KQ)

Chapter 8
Criminal Law and Procedure

Brenda Carter (BC), Howard Alan Pell (HAP), Kelly Quick (KQ), Susan Sitze (SLS)

Enacted Legislation

Restore Firearms Rights/Technical Correction

S.L. 2011-2 (HB 18) clarifies the effective date of a 2010 amendment to the Felony Firearms Act that allows a North Carolina resident convicted of a single nonviolent felony and whose citizenship rights have been restored for a period of at least 20 years to petition the court to restore the person's firearms rights in this State. This act makes it clear that the restoration provisions are not limited only to persons whose disqualifications are based on offenses committed on or after February 1, 2011. Additionally, the act clarifies that background check information obtained by the State Bureau of Investigation on a person petitioning for restoration of rights must be kept confidential, but does not have to be kept in a separate file.

This act became effective March 5, 2011. (SLS)

Exclusionary Rule/Good Faith Exception

S.L. 2011-6 (HB 3). See **Courts, Justice, and Corrections**.

Add Controlled Substances

S.L. 2011-12 (SB 7) amends the Controlled Substances Act to add various synthetic compounds and derivatives. The act:

- Adds mephedrone, MDPV ("bath salts"), and certain other compounds as Schedule I controlled substances.
- Adds synthetic cannabinoids and certain chemical "backbone" structures as Schedule VI substances.
- Adds a trafficking offense for the sale, manufacture, transport, or possession of 28 grams or more of MDPV. The amounts and penalties are the same as for cocaine.
- Adds a trafficking statute for mephedrone. The schedule is the same as the cocaine trafficking statute.
- Provides a penalty scale for the possession of synthetic cannabinoids. Less than 7 grams is a Class 3 misdemeanor, more than 7 grams is a Class 1 misdemeanor, and more than 21 grams is a Class I felony. Possession of 150 grams could be the basis of a trafficking charge, which is a Class H felony.
- Exempts the transfer, without consideration, of less than 2.5 grams of a synthetic cannabinoid or any mixture containing it, from the distribution laws.
- Adds a trafficking offense for the sale, manufacture, transport, or possession of 150 grams or more of synthetic cannabinoids, with penalties up to a minimum of 14.5 years in prison, depending on the amount of synthetic cannabinoids involved.

This act became effective June 1, 2011, and applies to offenses occurring on or after that date. (HAP)

Forensic Sciences Act

S.L. 2011-19 (HB 27). See **Courts, Justice, and Corrections**.

Repeal Crossbow Purchase Permit Requirement

S.L. 2011-56 (SB 406) repeals the law requiring a permit for selling, giving away, transferring, purchasing, or receiving a crossbow.

This act became effective April 28, 2011. (KQ)

Unborn Victims of Violence Act/Ethen's Law

S.L. 2011-60 (HB 215) provides for the punishment of certain crimes against an unborn child. The act:

- Defines "unborn child" as a member of the species Homo sapiens, at any stage of development, who is carried in the womb (in utero).
- Sets forth murder offenses causing the death of an unborn child in one of the following ways:
  - Intentional. – The defendant commits a willful and malicious act with the intent to cause the death of the unborn child. This requires the defendant to have known about the pregnancy, and to have had the specific intent that the unborn child would be the victim. The offense is a Class A felony punishable by life without parole.
  - Felony Murder. – The defendant causes the death of the unborn child in perpetrating or attempting to commit arson, rape, or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon. The offense is a Class A felony punishable by life without parole.
  - Inherently dangerous act with reckless and wanton disregard of life. – The defendant commits the act with "malice;" equates to malice as the element in a second degree murder case, with the same penalty as provided for second degree murder.
- Provides for a voluntary manslaughter charge if a defendant unlawfully causes the death of an unborn child by an act which would be voluntary manslaughter if it resulted in the death of the mother. The offense is punishable as a Class D felony.
- Provides for an involuntary manslaughter charge if a defendant unlawfully causes the death of an unborn child by an act which would be involuntary manslaughter if it resulted in the death of the mother. The offense is punishable as a Class F felony.
- Provides for the offense of assault inflicting serious bodily injury if the defendant assaults the mother and, due to the assault, the child (i) suffers "serious bodily harm" (defined term); (ii) is kept hospitalized for a prolonged period; or (iii) is born prior to 37 weeks gestation and weighs less than 2,500 grams (5.5 lbs.) at birth. (Class F felony).
- Provides for the offense of battery on an unborn child if the defendant commits a battery on a pregnant woman. This offense is a lesser included offense of assault inflicting serious bodily injury on an unborn child, and is punishable as a Class A1 misdemeanor.
- Excepts the following from the act:
  - Legal abortions.
  - Usual and customary standards of medical practice during diagnostic testing or therapy.
  - Any act committed by the pregnant women with regard to her unborn child.
- Provides that, except for the intentional murder offense, a defendant need not have knowledge of the pregnancy or have the specific intent to cause the death of, or bodily injury to, an unborn child.
- Repeals a law providing an aggravated penalty for assault against a pregnant woman if the unborn child is stillborn or there is a miscarriage.

- Specifically excludes from the act a pregnant woman who is a victim of domestic violence.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (HAP)

Sex Offender Registry Amendments

S.L. 2011-61 (HB 219) makes changes regarding sex offender registration as follows:

- Requires a person registering as a sex offender to indicate his or her name at the time of the conviction, any aliases used at the time of the conviction, and the name as it appears on the judgment imposing sentence for the conviction.
- Requires a registered sex offender to notify the sheriff of any name change and to verify his or her name during the verification process.
- Changes the venue for petition for removal from the sex offender registry to:
  - The superior court district of conviction, if the conviction occurred in North Carolina.
  - The superior court district where the person currently resides, if the conviction occurred in another state. Additionally, when petitioning for removal from the registry a person convicted in another state must notify the sheriff of the county where the conviction occurred.
- Requires the Division of Criminal Statistics to maintain the statewide public access registry so that a member of the public may conduct a search for a registrant under any name or alias.
- Clarifies that a sex offender may not change his or her name through the special proceeding process of the General Statutes regarding Names of Persons.

The provisions of this act relating to registration and maintenance of the sex offender registry became effective December 1, 2011, and apply to persons whose initial registration occurs on or after that date, and to persons who registered prior to that date and continue to be registered on that date. However, any person registered prior to December 1, 2011, is not in violation of registration, verification, or reporting requirements regarding his or her name if the required information is provided at the first verification of information occurring on or after December 1, 2011. The provision relating to venue of petition for removal from the registry applies to petitions filed on or after December 1, 2011. The provision relating to name changes became effective May 3, 2011, and applies to petitions filed or pending on or after that date. (SLS)

Amend Conditions of Probation

S.L. 2011-62 (HB 270). See **Courts, Justice, and Corrections**.

Obtain Blood Sample/Implied-Consent Laws

S.L. 2011-119 (SB 16). See **Transportation**.

Allow Savings Promotion Raffles

S.L. 2011-146 (SB 513). See **Commercial Law and Consumer Protection**.

Enhance Protection of Victims and Witnesses

S.L. 2011-190 (SB 268) increases the penalty for intimidating or interfering with a person who is summoned or acting as a witness in any court in this State. The offense is reclassified from a Class H felony to a Class G felony.

This act became effective December 1, 2011. (BC)

Laura's Law

S.L. 2011-191 (HB 49). See **Transportation**.

Justice Reinvestment Act

S.L. 2011-192 (HB 642). See **Courts, Justice, and Corrections**.

Disturbing/Dismembering Human Remains

S.L. 2011-193 (HB 227) makes it a Class I felony to willfully disturb or desecrate human remains. The act makes it a Class H felony to conceal evidence of the death of a person by knowingly and willfully dismembering or destroying human remains; however, if the human remains are of a person who did not die of natural causes, the offense is a Class D felony.

This act became effective December 1, 2011. (BC)

Checking Station Pattern Selection

S.L. 2011-216 (HB 381). See **Transportation**.

Landowner Protection Act

S.L. 2011-231 (HB 762) makes it a Class 2 misdemeanor to willfully go onto the land of another, without permission, to hunt or fish. Written permission to hunt on posted land or take fish from private ponds must be signed and dated within the preceding 12 months. It is an affirmative defense to a prosecution if the person had, in fact, obtained prior permission of the owner, lessee, or agent as required, but did not have on his or her person valid written permission at the time of citation or arrest.

The act provides, as an alternative method of posting property by signage, a person may use vertical purple paint marks that are between 3 and 5 feet from the base of a tree or post, and placed no more than 100 yards apart, to mark the boundary of the property. To prohibit fishing, the purple marks need only be made along the stream or shoreline.

The act may be enforced by wildlife officers, as well as by sheriffs, deputy sheriffs, and other peace officers with general subject matter jurisdiction.

This act became effective October 1, 2011, and applies to offenses occurring on or after that date. (HAP)

Probation Officer/No Concealed Carry Required

S.L. 2011-243 (HB 271) exempts an off-duty probation or parole officer from the prohibition against carrying a concealed weapon, provided the person does not carry the weapon

while consuming alcohol or an unlawful controlled substance or while alcohol or unlawful controlled substance remains in the body.

This act became effective December 1, 2011. (SLS)

Pretrial Release Violation/Arrest

S.L. 2011-245 (SB 311) expands the statute allowing warrantless arrests to include violations of pretrial release conditions for any criminal offense, whether the violation occurs in or outside the presence of the officer.

S.L. 2011-245 also defines "electronic monitoring, " "electronically monitor," and "satellite-based monitoring" in all provisions of the General Statutes dealing with criminal process or procedure. The act requires that the Department of Correction must provide, and registered sex offenders subject to electronic monitoring must wear, a device that provides exclusion zones around the premises of all elementary and secondary schools in the State. The Department of Correction must report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by June 1, 2012, on implementation of the new electronic monitoring service and equipment, and provide the Committee with its evaluation of how the new system is functioning, and how it compares with other systems used by the Department for the same purpose.

The provisions of this act relating to pretrial release became effective December 1, 2011, and apply to violations of pretrial release conditions occurring on or after that date. The satellite-based monitoring sections of the act became effective October 1, 2011. (KQ)

Amend Criminal Discovery Laws

S.L. 2011-250 (HB 408). See **Courts, Justice, and Corrections**.

Substance Abuse Treatment

S.L. 2011-254 (HB 629). See **Courts, Justice, and Corrections**.

Certificate of Relief Act

S.L. 2011-265 (HB 641). See **Courts, Justice, and Corrections**.

Victims' Compensation Law Changes

S.L. 2011-267, Secs. 1 through 4 (SB 272, Secs. 1 through 4) makes the following changes to the North Carolina Crime Victims Compensation Act:

- Expands the definition of "collateral source" to include a charitable gift or donation by a third party, including a charity care write-off of expenses by a medical provider, regardless of whether the gift or donation is subsequently rescinded. Collateral sources are prohibited from pursuing subrogation out of a crime victim's recovery from the Crime Victims Compensation Fund.
- Limits a dependent's economic loss to $300 per week for 26 weeks from the date of injury.
- Requires personal information of claimants and victims and information concerning the disposition of claims for compensation, other than the total amount awarded to a victim or claimant, to be kept confidential.

- Requires, rather than permits, the suspension of compensation proceedings upon request of the Attorney General during the pendency of an ongoing or impending prosecution.

These sections became effective July 1, 2011, and apply to claims submitted on or after that date. (SLS)

Amend Various Gun Laws/Castle Doctrine

S.L. 2011-268 (HB 650) creates and amends State laws relating to the ownership, possession, and concealed carry of firearms, and expands the "Castle Doctrine" to apply to a motor vehicle or the workplace. Significant provisions of the act include the following:

- **Castle Doctrine.**
  - Creates a rebuttable presumption that a lawful occupant of the property using defensive force had a reasonable fear of death or serious bodily harm if both of the following apply:
    - An intruder was unlawfully and forcibly entering the property or had unlawfully and forcibly entered the property, or the intruder was removing, or attempting to remove another person from the property; and
    - The person using defensive force knew, or had reason to believe, that an unlawful and forcible act was occurring or had occurred.
  - Provides a list of exceptions to the presumption. Exceptions include the following circumstances:
    - The person against whom defensive force was used is a lawful resident or occupant of the property, and there is no court order providing for non-contact by that person.
    - The person being removed from the property is a child or grandchild of, or in the lawful custody of, the person against whom defensive force was used.
    - The person using defensive force was furthering a criminal offense involving the use of force.
    - The person against whom force was used is a law enforcement officer or bail bondsman in performance of official duties, and the person properly identified himself or herself as an officer or bondsman.
    - The person against whom force was used had discontinued efforts to unlawfully enter, and had exited the property.
  - A person who justifiably uses force as provided in the act is immune from criminal prosecution and civil action. An exception to this immunity is where the force was used against a law enforcement officer or bail bondsman acting in the performance of duties and who identified himself or herself, or the person using force knew, or reasonably should have known, that the person was a law enforcement officer or bail bondsman.
  - A person, wherever located, has no duty to retreat, and may use what force is necessary, except for deadly force, in defense of self or others. There is no presumption of reasonable fear of death or serious bodily harm if the person is not located in the home, motor vehicle, or workplace. Further, deadly force may be used only if the person using force reasonably believed (objective standard) that such force was necessary to prevent imminent death or great bodily harm to self or others.
  - A person using defensive force as permitted by this act is immune from civil or criminal liability.
  - Defensive force is not justified if the person using the force was attempting to commit a crime, was escaping after the commission of a crime, or provoked the use of force. However, a person who initially provoked the use of force still may use defensive force if certain conditions are met.

- **Weapons, Firearms, and Concealed Carry.**
  - Amends the statute that specifies who may carry a concealed handgun off their own premises, and who is exempt from the statute limiting the areas and locations where persons with concealed carry permits may carry concealed:
    - Adds any district attorney, assistant district attorney, or investigator employed by the office of a district attorney, provided the person is not consuming alcohol or an unlawful controlled substance, and there is no remaining alcohol or unlawful controlled substance in the person's body. The listed persons may not carry a concealed handgun in a courtroom, and the handgun must be secured in a locked compartment when not being carried.
    - Adds qualified retired law enforcement officers who meet specified qualifications.
    - Adds detention personnel or correctional officers employed by the State or a unit of local government, and provides that those persons may transport a firearm to a parking space that is authorized for their use and may store the firearm in the vehicle, provided the firearm is stored in a compartment or container in the locked vehicle, or is in a locked container securely fixed to the vehicle.
  - Requires that a person must knowingly possess a firearm in order to be found guilty of the felony offense of possession of a firearm on educational property.
  - Amends the statute prohibiting the possession of weapons on certain State property to allow a person holding a valid concealed carry permit to have a firearm in a vehicle. If the person is not in the vehicle, the firearm must be in a closed compartment or container within the locked motor vehicle, or in a locked container securely affixed to the vehicle.
  - Adds a "knowingly and intentionally" requirement to the prohibition against possession or carrying of a handgun by persons under the age of 18. The act increases the penalty for violation from a Class 2 to a Class 1 misdemeanor.
  - Clarifies that a person who is subject to a domestic violence protective order may own, but not possess, a firearm during the pendency of the order.
  - Allows a person to possess a weapon of mass death and destruction or a machine gun if that person possesses and owns the weapons in compliance with federal law.
  - Amends the law that allows law enforcement officers to purchase a firearm without first obtaining a purchase permit. The act removes a requirement that the purchase be directly related to the law enforcement officer's official duties, and specifies the type of documentation that is required.
  - Makes it a Class F felony to knowingly solicit, persuade, encourage, or entice a licensed dealer or private seller of firearms or ammunition to transfer the firearm or ammunition if the person knows the transfer will violate State or federal law. It is also a Class F felony to provide materially false information to a licensed dealer or private seller of firearms or ammunition with the intent to deceive the dealer about the legality of the transfer.
  - Clarifies State law regarding the out-of-state purchase of a firearm, and expands a person's authority to purchase a firearm located in any state (not just contiguous states) with the proper background check.
  - Clarifies that a convicted felon who has been pardoned or whose firearms rights have been restored is eligible to possess a firearm.
  - Clarifies the scope of a concealed carry permit (unless the permittee falls into a class of persons specifically exempted, e.g., district attorneys). Prohibitions include concealed carry on any private premises where a sign has been posted to prohibit it, on certain State property or in buildings housing only federal or state offices, or on educational property.

- Clarifies that concealed handgun permit holders may concealed carry on the grounds or waters of any State park; at any State-owned rest area, at any State-owned rest stop along the highways, and at any State-owned hunting and fishing reservation.
- Limits the permissible use of a release of mental health records, but clarifies the information may be included in submissions to the National Instant Criminal Background Check System (NICS).
- Reduces, from 90 to 45 days, the amount of time within which a sheriff may renew a concealed carry permit after receipt of an application. However, the 45 days is measured from the time the sheriff receives the required records concerning mental health or competency of the applicant.
- Removes requirement that fingerprints be provided for a concealed carry permit renewal application, and requires an NICS check as part of the criminal history update.
- Removes a requirement that sheriffs keep social security numbers as part of the list of identifying information relating to concealed carry permittees.
- Clarifies the grounds upon which a sheriff may revoke a concealed carry permit for misuse of the permit. A permit holder may not give a duplicate permit to another person, unless that person is a vender and the duplicate is for record keeping purposes.
- Reduces the penalty for second and subsequent offenses involving the failure of a concealed carry permit holder to carry the permit when carrying a concealed weapon, or failure to inform a law enforcement officer that the permittee is carrying a concealed weapon. A first offense remains an infraction; a second offense is reduced from a Class 2 misdemeanor to an infraction. A permittee may surrender the permit in lieu of paying a fine.
- Amends the statute generally prohibiting local governments from regulating concealed carry of handguns as follows:
  - Continues local government authority to regulate the carry of concealed handguns in local government buildings and surrounding areas, but removes local government authority to regulate the carrying of concealed firearms in parks.
  - Allows local governments to adopt ordinances prohibiting concealed handguns at recreational facilities. This provision applies to playgrounds, athletic fields, swimming pools, and athletic facilities.
  - Requires that any ordinance prohibiting concealed carry of handguns at a recreational facility include a provision allowing the concealed handgun permittee to secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle.
- Recognizes concealed carry permits issued by another state as valid. Previously, only permits issued by states recognizing North Carolina issued permits were deemed to be valid.
- Prohibits the Legislative Services Commission from adopting a rule prohibiting a legislator or legislative employee from storing a firearm in a locked vehicle parked within the Legislative Complex. Authorizes legislators and legislative employees to transport and keep firearms in a vehicle parked in State-leased parking spaces if the firearms are in a closed compartment or container within a locked vehicle, or in a locked container securely affixed to the vehicle.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (HAP)

Run and You're Done

S.L. 2011-271 (HB 427). See **Transportation**.

Allow Juvenile Record/Risk Determination/Bond

S.L. 2011-277 (SB 135). See **Courts, Justice, and Corrections**.

Expunge Nonviolent Offense by Minor

S.L. 2011-278 (SB 397). See **Courts, Justice, and Corrections**.

Sex Offender Supervision/Forensic Amendments

S.L. 2011-307 (SB 684). See **Courts, Justice, and Corrections**.

Domestic Fowl Stray/Commercial Poultry Lands

S.L. 2011-313 (SB 602), as amended by S.L. 2011-412, Sec. 3.1 (HB 335, Sec. 3.1), makes it a Class 3 misdemeanor for a person to allow domestic fowl to run at large on the land of a commercial poultry operation after having received actual or constructive notice of the fowl running at large.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (SLS)

Driving While Impaired/Custodial Interrogation Amendments

S.L. 2011-329, Sec. 1 (SB 241, Sec. 1). See **Transportation**.
S.L. 2011-329, Sec. 2 (SB 241, Sec. 2). See **Courts, Justice, and Corrections**.

Assault on Law Enforcement and Emergency Medical Worker/Felony

S.L. 2011-356 (SB 762) makes the following changes to criminal laws pertaining to assault on law enforcement and emergency medical personnel:

- Adds a new Class I felony offense of assault on law enforcement officers, probation and parole officers, or detention personnel causing physical injury. For purposes of this act, "physical injury" includes cuts, scrapes, bruises, or other injury which does not constitute serious injury.
- Adds certain emergency department personnel (e.g., physician's assistant, nurse) under the protection of the assault on emergency personnel statute.
- Adds physical injury as an additional element of the offense of assault on emergency personnel, and increases the offense classification from a Class A1 misdemeanor to a Class I felony.
- Increases the offense classification for assault against emergency personnel causing serious bodily injury or assault using a deadly weapon other than a firearm, raising it from a Class I felony to a Class H felony,
- Increased the penalty for assault on emergency personnel where there is a declared state of emergency or the victim is within the immediate vicinity of a riot, raising the

offense from a Class 1 misdemeanor to a Class I felony, "Emergency personnel" in these situations include: law enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during the emergency.

This act became effective December 1, 2011, and applies to offenses occurring on or after that date. (HAP)

Ignition Interlock Systems/Record Checks

S.L. 2011-381 (HB 761). See **Transportation**.

Chapter 9
Education

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

Enacted Legislation

Public Schools

No Standardized Testing Unless Required by Feds

S.L. 2011-8 (HB 48) clarifies the authority of the State Board of Education (SBE) with regard to the testing of students in grades 3 through 12. The SBE is authorized to adopt any tests required by federal law or as a condition of a federal grant. The SBE also may require public schools to administer standardized tests other than those required by federal law or as a condition of a federal grant, if the SBE finds the additional tests are needed to allow comparisons with national indicators of student achievement. The SBE's authority to develop and implement a plan for high school end-of-course tests aligned with content standards is repealed, and the following end-of-course tests are eliminated: 1) United States History; 2) Civics and Economics; 3) Algebra II; and 4) Physical Science.

This act directed the SBE, in conjunction with the Department of Public Instruction, to consider alternative assessment strategies for measuring student academic performance and the evaluation of teachers, and to report any proposals to the House and Senate Education Committees by June 1, 2011.

This act became effective July 1, 2011, and applies beginning with the 2011-2012 school year. (PP)

High School to Work Partnership

S.L. 2011-91 (HB 769) directs each local board of education to encourage high school-business partnerships targeting students who may not pursue higher education. The partnerships may include opportunities to complete a job shadow, internship, or apprenticeship.

Students are not to be counted as absent when participating in these work-based experiences or in Career and Technical Education student organization activities, and local boards must develop a policy allowing students to make up work missed while away from school on a job shadow. Local boards may determine the maximum number of days a student may participate in job-shadowing experiences.

This act became effective May 26, 2011, and applies beginning with the 2011-2012 school year. (SK)

School Calendar Flexibility/Inclement Weather

S.L. 2011-93 (HB 197) gives local school administrative units (LEAs) and charter schools the flexibility to make up any instructional days missed due to inclement weather or other emergency situations during the 2010-2011 school year, if the following criteria are met:

- The LEA missed more than 20 instructional days due to inclement weather, and instruction is provided at least through June 10. The act applies to any charter school that missed more than 20 instructional days due to inclement weather.

- The LEA missed instructional days at one or more schools due to the partial or complete destruction of a school building, and is located within a county that has a population of less than 25,000, and was declared a federal disaster area as a result of severe storms, tornadoes, and flooding occurring on April 16, 2011.
- The public school missed instructional days due to partial or complete damage of the school building, and the school is located in an LEA within a county declared a federal disaster area as a result of severe storms, tornadoes, and flooding occurring on April 16, 2011.
- The public school missed instructional days due to a state of emergency in March 2011 declared by the county, and the school is located in an LEA within a coastal county that has a population of more than 175,000.

If the above criteria are met, the local board of education is authorized to schedule either 180 days or 1,000 hours of instruction rather than 180 days and 1,000 hours of instruction. Qualifying local boards that schedule 1,000 hours of instruction on less than 180 days are deemed to have 180 days of instruction, and employees must be compensated accordingly. Qualifying charter schools are exempt from the requirement to provide 180 days of instruction for the 2010-2011 school year, but are required to provide a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months.

This act became effective May 26, 2011, and applies only to the 2010-2011 school year. (DC)

Add Superintendent to North Carolina Economic Development Board

S.L. 2011-121 (HB 181) adds the Superintendent of Public Instruction, or the Superintendent's designee, as a member of the Economic Development Board. The act is a recommendation of the Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission.

This act became effective June 13, 2011. (SK)

Career and College Promise

S.L. 2011-145, Sec. 7.1A (HB 200, Sec. 7.1A), as amended by S.L. 2011-391, Sec. 13 (HB 22, Sec. 13), requires the State Board of Education (SBE) and the North Carolina Community College System (NCCCS) to establish the Career and College Promise program, offering structured opportunities for qualified high school students to dually enroll in community college courses that provide pathways to a certificate, diploma, or degree and providing entry-level jobs skills. Existing high school transition programs must be consolidated and replaced by Career and College Promise.

The following Career and College pathways, aligned with the Kindergarten-12th Grade curriculum and with career and college-ready standards adopted by the SBE, may be offered upon approval by the State Board of Community Colleges:

- Career Technical Education Pathway – leading to a certificate or diploma aligned with one or more high school Tech Prep Career Clusters.
- College Transfer Pathway – leading to a college transfer certificate requiring successful completion of 30 hours of transfer courses, including English and mathematics, for qualified junior and senior high school students.
- Cooperative innovative high schools – small high school programs partnered with institutions of higher education approved in accordance with applicable State law.

Subject to approval of the Board of Governors, constituent institutions of The University of North Carolina may offer cooperative innovative high school programs as a Career and College pathway.

This section requires NCCCS and the Department of Public Instruction to jointly develop and implement a plan to evaluate short- and long-term outcomes for the Career and College Promise program. Community colleges are directed to generate budget full-time equivalent (FTE) for instruction provided through Career and College Promise, and the Community Colleges System Office must report to the Joint Legislative Education Oversight Committee on the number and cost of high school FTE served as a result of the program. This section also repeals statutes permitting students under the age of 16 to enroll in a community college under certain conditions and permitting enrollment of students in grades 9 through 12 in Learn and Earn online college courses.

This section requires NCCCS and The University of North Carolina General Administration to develop a plan for articulation of a college transfer certificate requiring the successful completion of 30 credit hours of college transfer courses for qualified junior and senior high school students. The North Carolina Independent Colleges and Universities is authorized to participate in the development of this plan.

Cooperative innovative high school programs may target high school students whose parents did not continue education beyond high school, and must enable students to concurrently obtain a high school diploma and either begin or complete an associate's degree, master a certificate or vocational program, or earn up to two years of college credit within five years. The section repeals additional requirements for cooperative innovative high school programs, including specific requirements targeted at students at risk of dropping out of high school and programs with accelerated learning programs.

This section defines cooperative innovative high schools as high schools which have no more than 100 students per grade level, partner with an institution of higher education to enable students to earn both a high school diploma and an associate's degree, mastery of a vocational program, or college credit within five years, and are located on the campus of an institution of higher education. The governing board may waive the location requirement. Other types of cooperative innovative high schools approved by the State Board of Education prior to July 1, 2011, must meet the revised definition of a cooperative innovative high school no later than July 1, 2014. Provisions related to other types of cooperative innovative high schools, such as five-year academies, are repealed.

This section specifies that, effective January 1, 2013, through June 30, 2015, cooperative innovative high schools will not be provided additional State funds, other than funds appropriated by the General Assembly.

This section becomes effective January 1, 2012. (KM)

Tuition Charge for Governor's School

S.L. 2011-145, Sec. 7.9 (HB 200, Sec. 7.9) authorizes the State Board of Education to make the North Carolina Governor's School receipt-supported beginning with the Summer 2012 program. State funding for this program is eliminated after the Summer 2011 session.

This section became effective July 1, 2011. (PP)

Elimination of Reporting Requirements

S.L. 2011-145, Sec. 7.13 (HB 200, Sec. 7.13), as amended by S.L. 2011-391, Sec. 14(a) and Sec. 14(b) (HB 22, Sec. 14(a) and Sec. 14(b)), repeals the Local Safe School Plan, the Local School System Technology Plan, and eliminates the annual reporting requirement relating to local school administrative unit expenditure of the At-Risk allotment.

This section became effective July 1, 2011. (SK)

Renewal of Professional Educator's License

S.L. 2011-145, Sec. 7.13A (HB 200, Sec. 7.13A) prohibits the State Board of Education from requiring more than five semester hours or seven and one-half units of renewal credits for renewal of a North Carolina Standard Professional 2 professional educator's license.

This section became effective July 1, 2011. (DC)

School Calendar Pilot Program

S.L. 2011-145, Sec. 7.17 (HB 200, Sec. 7.17) requires the State Board of Education (SBE) to extend the school calendar pilot program in Wilkes County Schools for a third consecutive school year in FY 2011-2012, and to expand the program to include Montgomery and Stanly County Schools. The pilot program allows participating local school administrative units to operate a calendar with either 185 instructional days or 1,025 hours of instruction covering at least nine calendar months. If necessary to enhance student performance, the SBE may grant pilot school systems a waiver to use up to five instructional days, or an equivalent number of hours, as teacher workdays.

The SBE must report to the Joint Legislative Education Oversight Committee by March 15, 2012, on the pilot's administration, cost savings, and impact on student achievement.

This section became effective July 1, 2011. (PP)

North Carolina Virtual Public Schools

S.L. 2011-145, Sec. 7.22 (HB 200, Sec. 7.22) requires the North Carolina Virtual Public School (NCVPS) to report to the State Board of Education (SBE) and maintain an administrative office in the Department of Public Instruction. The Director of NCVPS must ensure that students in rural and low-wealth local school administrative units have access to e-learning opportunities to expand available educational opportunities.

The section directs the SBE to begin implementation of an allotment formula for NCVPS to begin with the 2011-2012 school year. NCVPS must use all funds transferred to it to provide the program at no cost to all North Carolina students enrolled in the State's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

The SBE must develop separate per-student tuition for out-of-state students, home-schooled students, and private-school students.

The section directs the SBE to require NCVPS to develop a plan to generate revenue from the sale of courses to out-of-state educational entities and submit the plan to the SBE by September 15, 2011. Beginning in 2011, the Director of NCVPS must submit an annual report to the SBE no later than December 1 of each year including statistics on actual versus projected costs, student enrollment, virtual teacher salaries, and measures of academic achievement.

The section provides an exemption to the Umstead Act to allow NCVPS to sell courses to home schools, private schools, and out-of-state educational entities.

This section became effective July 1, 2011. (SK)

Performance-Based Reductions in Force

S.L. 2011-145, Sec. 7.23 (HB 200, Sec. 7.23), as amended by S.L. 2011-391, Sec. 16 (HB 22, Sec. 16), requires local school administrative units (LEAs) to adopt a Reduction in Force policy for certified employees on or before July 15, 2011. In forming the policy, LEAs must consider structural issues such as identifying positions, departments, courses, programs, operations, and other areas where the following exist:

- Less essential, duplicative, or excess personnel.
- Job responsibility and/or position inefficiencies.

- Opportunities for combined work functions.
- Decreased student or other demands for curriculum, programs, operations or other services.

LEAs also must consider the anticipated organizational needs of the school system and program and school enrollment. Work performance must be considered by LEAs in determining which employees in similar positions are to be subject to a reduction in force.

This section also eliminates the statutory requirement that career employees who are dismissed due to reduction in force have priority on positions in which they acquired career status for three consecutive years succeeding their dismissal.

This section became effective July 1, 2011. (DC)

Residential Schools

S.L. 2011-145, Sec. 7.25 (HB 200, Sec. 7.25) finds operation of the Eastern North Carolina School for the Deaf, the Governor Morehead School for the Blind, and the North Carolina School for the Deaf (residential schools) no longer meets the needs of the served populations and that current levels of utilization can be accommodated in two schools. The section directs the Department of Public Instruction (DPI) to report to the Joint Legislative Education Oversight Committee by January 15, 2012, on the residential school to be closed and the plan for consolidation of the remaining schools, which must be carried out by July 1, 2012. The section specifies factors that DPI must consider in evaluating the three schools.

DPI must ensure that residential and instructional schedules for residential schools in effect before February 8, 2010, remain in effect unless the General Assembly approves a material change to the instructional week. Residential students must have the opportunity to arrive at school on the evening of the day before commencement of academic instruction for the week. DPI must maintain substantially similar summer school programming at residential schools as in prior years, and make no material changes to summer school programming without approval of the General Assembly.

The section authorizes a principal position at each residential school. The separate position of superintendent for residential schools within DPI is eliminated, and DPI must designate one of the directors of the residential schools to serve as superintendent. The statute governing employment of teachers in the schools and institutions of the Departments of Health and Human Services, Correction, or Juvenile Justice and Delinquency Prevention also applies to persons employed by the Department of Public Instruction as teachers.

This section became effective July 1, 2011. (KM)

Increase Number of Instructional Days

S.L. 2011-145, Sec. 7.29 (HB 200, Sec. 7.29) provides a school calendar must have at least 185 days and 1,025 hours of instruction, and eliminates the requirement to include five protected teacher workdays in the school calendar. The State Board of Education may grant local school administrative units waivers to use up to five instructional days as teacher workdays if student performance will be enhanced. This section also makes conforming changes to the required instructional program offered by charter schools.

This section became effective July 1, 2011. (PP)

Testing Program

S.L. 2011-145, Sec. 7.30 (HB 200, Sec. 7.30) was repealed by S.L. 2011-280 (SB 479). See the summary for S.L. 2011-280 (SB 479) later in this chapter. (SK)

Cost-Efficient Tire Retreads on State Vehicles and School Buses

S.L. 2011-145, Sec. 28.36(b) (HB 200, Sec. 28.36(b)). See **Transportation**.

Driver Education Reform

S.L. 2011-145, Sec. 28.37 (HB 200, Sec. 28.37), as amended by S.L. 2011-334 (SB 339), requires the Department of Public Instruction (DPI) to administer a standardized program of driver education for students enrolled in a public school, private school, or home school. Local boards of education must offer noncredit driver education in the high schools using the standardized curriculum provided by DPI.

The section directs the State Board of Education (SBE) to implement a strategic plan for the driver education program. The plan must consist of goals, performance indicators, and the duties of an advisory committee of representatives from the Division of Motor Vehicles, the Department of Public Instruction, and other stakeholders.

The SBE is to develop a salary range for the delivery of driver education courses by driver education instructors who are public school employees. Driver education instructors are not required to hold teacher licenses, but must meet requirements established by the SBE.

The section requires the SBE to report to the Joint Legislative Program Evaluation Oversight Committee on the status of a standard curriculum for driver education. In addition, the SBE is directed to establish and implement a pilot program to deliver driver education by electronic means. The SBE is responsible for identifying the most cost-effective method of delivering driver education, and reporting that information to the Joint Legislative Education Oversight Committee and the Joint Legislative Program Evaluation Oversight Committee by June 15, 2012.

This section became effective July 1, 2011. (SK)

Education/Driver Education Course Fee

S.L. 2011-145, Sec. 31.1 (HB 200, Sec. 31.1) allows a local board of education to assess a fee of up to $45 for each student participating in a driver education course.

This section became effective July 1, 2011. (SK)

Gfeller-Waller Concussion Awareness Act

S.L. 2011-147 (HB 792) directs the Matthew A. Gfeller Sport Related Traumatic Brain Injury Research Center at the University of North Carolina at Chapel Hill to develop an athletic concussion safety training program in consultation with the Department of Public Instruction, the North Carolina High School Athletic Association, and other specified organizations. This program is intended for use by those who work with or participate in interscholastic athletic activities in the public schools. The program must include (1) written information detailing the signs and symptoms of concussions and other head injuries, (2) a description of the physiology and the potential short-term and long-term effects of concussions and other head injuries, and (3) the medical return-to-play protocol for post-concussion participation in interscholastic athletic activities.

The act requires the State Board of Education (SBE) to adopt rules governing interscholastic athletic activities conducted by local boards of education. The rules for middle and high school interscholastic athletic activities must provide for the following:

- Annual dissemination of a "concussion and head injury information sheet" to all persons involved in athletic activities. Parents must sign and return the sheet before their children can participate in any interscholastic athletic activities.
- Removal of students exhibiting signs and symptoms consistent with concussion from the activity. Students may not return to play or practice without written clearance from medical personnel trained in concussion management.
- Development of written school emergency action plans for dealing with serious injuries and acute medical conditions.
- Maintenance of complete and accurate records of the school's compliance with requirements pertaining to head injuries.

This act became effective June 16, 2011, and applies beginning with the 2011-2012 school year. (DC)

No Cap on Number of Charter Schools

S.L. 2011-164 (SB 8) eliminates the statewide charter school cap of 100 schools, and makes the following additional changes to the laws governing charter schools:

- Gives the State Board of Education (SBE) discretion in granting final approval of a charter school application that meets statutory requirements or requirements adopted by the SBE.
- Raises the charter school enrollment growth cap to 20% per year.
- Allows a charter school to charge the same student fees charged by the local school administrative unit in which the charter school is located.
- Requires the SBE to adopt criteria for determining adequate performance by a charter school, and directs the SBE to identify charter schools with inadequate performance. A charter school identified as inadequate in the first five years of the charter must develop a strategic plan to meet specific goals for student performance. The SBE may terminate or decline to renew a charter for failure to demonstrate improvement under the strategic plan. The SBE also is authorized to terminate or not renew the charter of an inadequate school that has had a charter for more than five years.

The SBE must submit a preliminary report on the implementation of this act to the General Assembly by May 10, 2012. A final report is due not later than June 11, 2012.

This act became effective July 1, 2011. (SK)

Behavioral Health Services for Military

S.L. 2011-185, Sec. 9 (SB 597, Sec. 9). See **Military, Veterans', and Indian Affairs**.

Repeal Savings Bond Payroll Savings Program

S.L. 2011-210, Sec. 2 (HB 313, Sec. 2). See **State Government**.

Public-Private Partnership for Schools

S.L. 2011-234 (SB 243) extends the authority of local school administrative units to enter into capital leases for the construction, repair, or renovation of school facilities.

This act became effective June 23, 2011, and will be repealed effective July 1, 2015. (SK)

Regional Schools

S.L. 2011-241 (SB 125) establishes a method for local boards of education to jointly establish regional schools to promote knowledge and skills in career clusters important in the region where the school is established. Through resolutions approved by the State Board of Education, any two or more local boards of education may create a regional school. The regional school must have a Board of Directors (Board) composed of representatives from participating local school boards, superintendents, economic development regional partnerships, parent advisory councils, and institutions of higher education.

The Board establishes the course of study, admissions criteria policies, and standards for academic performance, attendance, conduct, and issuance of driving eligibility certificates. The Board employs all principals, teachers, and other staff in the regional school. The principal and at least 50% of the teachers must meet requirements for certification, unless waived by the State Board of Education. Employees of the regional schools are exempt from most provisions of the State Personnel Act and are not eligible for career status.

Only students domiciled in a participating unit are eligible to attend the regional school. Admission criteria are established by the Board and must include priority for first-generation students, as well as academic achievement, interest in attendance, and parental support for attendance. For each student that enrolls in the regional school, State and local funds that are allocated to the participating unit on a per-pupil basis for that student are allocated to the regional school. Additional amounts are allocated for children with disabilities and children with limited English proficiency.

This act became effective June 23, 2011. (PP)

Clarify Process/Reportable Offenses in School

S.L. 2011-248 (SB 394) amends the law pertaining to a school principal's responsibility to report certain criminal acts occurring on school property. The act requires a principal to report not only those acts of which the principal has personal knowledge or actual notice from school personnel, but also those acts the principal reasonably believes occurred on school property. The act repeals the Class 3 misdemeanor for failure to report specified crimes to law enforcement, but authorizes the demotion or dismissal of a principal who willfully fails to make a required report. The act prohibits the State Board of Education from requiring principals to report any criminal acts other than those specified, and the act cannot be interpreted to interfere with the due process rights of school employees or the privacy rights of students.

This act became effective June 23, 2011, and applies beginning with the 2011-2012 school year. (SK)

Dropout Recovery Pilot Program

S.L. 2011-259 (HB 822) directs the State Board of Education (SBE) to implement a three-year Dropout Recovery Program (Pilot Program) in New Hanover County Schools and in three other local school administrative units. Under the Pilot Program, the educational services and programming will be provided by a nonprofit or for-profit education partner approved by the SBE.

The Pilot Program must provide accessible facilities, flexible scheduling and attendance requirements, differentiated instruction, and daily student assessments aligned with State and local standards and requirements. Education partners must have at least a two-year history of dropout recovery services provided to diverse populations in traditional and charter public schools through brick and mortar schools and through online delivery, and must demonstrate a detailed operational plan.

A student attending the Pilot Program will be enrolled as a student and included in the average daily membership of the resident school system. The resident school system will retain

5% of the total per pupil funding for the student in order to cover administrative costs and remit the remaining 95% to the education partner within 15 days of receiving payment from the Department of Public Instruction.

This act became effective July 1, 2011. (PP)

Modify Law Regarding Corporal Punishment

S.L. 2011-270 (SB 498), prohibiting corporal punishment on students whose parents indicated in writing that corporal punishment not be administered, was repealed by S.L. 2011-282 (HB 736). See the summary for S.L. 2011-282 (HB 736) later in this chapter. (PP)

The Founding Principles Act

S.L. 2011-273 (HB 588) requires that high school students pass a semester-long American history course on the Founding Principles in order to graduate. The Department of Public Instruction (DPI) and local boards of education, as appropriate, must provide or cause to be provided the curriculum content for the course.

The State Board of Education must require that any statewide high school curriculum-based tests, administered beginning with the 2014-2015 academic year, include questions related to the philosophical foundations of the American form of government and the principles underlying the Declaration of Independence, the United States Constitution, and the most important of the Federalist Papers.

DPI must submit a biennial report regarding implementation of the act by October 15 of each odd-numbered year to the Joint Legislative Education Oversight Committee.

This act became effective June 23, 2011, and applies beginning with the 2014-2015 school year. (SK)

Testing in the Public Schools

S.L. 2011-280 (SB 479) requires the State Board of Education (SBE) to continue to participate in the development of the Common Core State Standards, review all nationally-developed assessments related to the Common Core, and implement the assessments that the SBE considers most appropriate.

To the extent funds are available, the SBE must require administration of the American College Testing (ACT) examination for 11th grade students, administration of diagnostic tests aligned to the ACT in the 8th and 10th grades to help diagnose student learning and help students to know if they are on track for remediation-free community college or university education, and require local school systems to make appropriate WorkKeys tests available for students completing the second level of vocational and career coursework.

This act became effective July 1, 2011, and applies beginning with the 2011-2012 school year. (SK)

Amend Law Regarding School Discipline

S.L. 2011-282 (HB 736) revises school discipline law by repealing certain statutes and codifying a new statutory process that does the following:

- Clarifies purpose of school discipline.
- Requires local boards of education (local boards) to adopt policies governing student conduct and provide notice to students of expected behavior and disciplinary measures under those policies. Mandatory long-term suspensions are not permitted unless otherwise provided by law.

- Authorizes school personnel to use reasonable force to control behavior for certain purposes.
- Requires local boards to determine if corporal punishment is allowed and, if so, the board must adopt policies for administration, including a prohibition on corporal punishment if a parent states in writing that corporal punishment not be administered on the child.
- Gives principals the authority to use short-term (less than 10-day) suspensions, clarifies students' rights while suspended, and details short-term suspension procedures.
- Gives the superintendent the sole authority to impose a long-term suspension. The act details long-term suspension procedures, and makes local board decisions to uphold long-term suspensions subject to judicial review upon appeal.
- Requires that long-term suspended students be offered alternative education services, unless the superintendent provides a significant or compelling reason for declining those services.
- Requires local boards to develop policies to comply with the federal Guns Free School Act, imposing mandatory 365-day suspensions for firearms on educational property.
- Grants authority for local boards to expel students 14 years and older who present a clear threat to staff or other students; details procedure for expulsion.
- Details the process allowing students who are expelled or suspended for 365 days to apply for readmission after 180 days.

This act became effective June 23, 2011, and applies beginning with the 2011-2012 school year. (PP)

Establish Arts Education Commission

S.L. 2011-301 (HB 758) creates the Arts Education Commission (Commission) consisting of nine members appointed by the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

The Commission is directed to review, prioritize, and recommend implementation strategies for the recommendations of the Comprehensive Arts Education Plan for grades Kindergarten-12, and work with the Department of Public Instruction to create assessment models to measure student achievement in arts education. The act provides for the analysis and assessment of student performance to be included in the North Carolina Educator Evaluation System for Arts Education Teachers and serve as a model for evaluating the effective practice of arts integration by classroom teachers in other content areas.

The Commission must make recommendations on the establishment of arts education accountability incentives for schools, and also recommend a permanent financing strategy to provide for comprehensive arts education in grades Kindergarten-12.

The Commission must report its findings and recommendations to the 2012 Session of the 2011 General Assembly by May 1, 2012, and terminates upon the filing of its final report.

This act became effective June 24, 2011. (DC)

High School Accreditation

S.L. 2011-306 (HB 342). See **Higher Education** in this chapter.

Local Boards of Education/403(b) Option

S.L. 2011-310 (HB 730). See **Retirement**.

Eliminate Cost/Reduced-Price School Breakfast

S.L. 2011-342 (SB 415) requires the use of funds appropriated for the school breakfast program in providing school breakfasts at no cost to students of all grade levels qualifying for reduced-price meals in schools participating in the National School Breakfast Program. If the appropriated funds are insufficient to provide school breakfasts at no cost to students qualifying for reduced-price meals, then the local child nutrition programs must charge students qualifying for reduced-price meals the allowable amount for a reduced-price breakfast under the guidelines of the National School Breakfast Program.

The act directs the State Board of Education to report to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations on the following:

- An overview of the federally supported food service programs.
- The procedure for participation in the programs, including the number of students who apply, are accepted, and are rejected for free and reduced-price meals, or automatically qualify for the programs as required by the United States Department of Agriculture.

The act directs the State Auditor to audit the Division of School Support, Child Nutrition Services of the Department of Public Instruction by December 15, 2011, and report to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations on whether the local school administrative units' participation in the federally supported food service programs effectively serve the intent of the General Assembly and comply with federal and State law and regulations.

This act became effective July 1, 2011. (DC)

Modify Teacher Career Status Law

S.L. 2011-348 (SB 466) amends the law pertaining to career status for public school teachers. The act extends and clarifies deadlines applicable to the dismissal hearings process and requires that all related documents include a signed certificate of service similar to that required in court pleadings. The act replaces case managers with hearing officers who are members of the North Carolina State Bar and who have relevant experience and expertise. The act establishes a selection and removal process for hearing officers.

The act clarifies the evaluation process for licensed employees of low-performing schools. Employees evaluated below proficient must receive a mandatory improvement plan or a recommendation of dismissal or demotion. A principal may institute a mandatory improvement plan immediately, regardless of ratings on past evaluations, any time a teacher engages in inappropriate conduct or performs inadequately to a degree that causes substantial harm to the educational environment.

The act also adds a new statute to govern the evaluations of teachers in schools not identified as low-performing. It specifies when mandatory improvement plans are to be implemented and outlines the process of dismissal for teachers subject to those plans. A process for observation by qualified observers is also established in the act.

This act became effective July 1, 2011, and applies to persons recommended for dismissal or demotion on or after that date. (PP)

Multiple Birth Sibling Classroom Placement

S.L. 2011-354 (SB 726) allows parents of multiple birth siblings assigned to the same grade level to request a consultative meeting with the principal to consider the initial placement of the children in the same or different classroom. The request must be made not later than five days before the first day of each school year or five days after the multiple birth siblings first

attend school. Schools may recommend and offer educational advice to parents regarding appropriate placement of the multiple birth siblings. Schools must place the children as requested by parents, with three exceptions:

- If separate classroom placement requires an additional classroom to the grade level of the multiple birth siblings.
- If, at the end of the first grading period of the enrollment of the students in the school, the principal, in consultation with the multiple birth siblings' teachers, decides that the placement is disruptive to the school.
- If the school administrative unit, principal, or teacher has the right to remove a student from the classroom under the discipline policies of that local school administrative unit.

This act becomes effective beginning with the 2011-2012 school year. (DC)

School and Teacher Paperwork Reduction Act

S.L. 2011-379 (HB 720) directs the State Board of Education (SBE) to allow schools and local school administrative units (LEAs) to electronically submit all reports to the Department of Public Instruction (DPI). The SBE, in collaboration with the education roundtables within DPI, must consolidate all plans affect the school community - including school improvement plans. The consolidated plans must then be posted on each school's website. The SBE must report to the Joint Legislative Education Oversight Committee by November 15 of each year on the reports it has consolidated or eliminated for the upcoming school year. The SBE is also directed to adopt policies for streamlining the process for LEAs applying for State funding, including a policy for consolidation of the applications.

Local boards of education must consolidate reporting requirements and, prior to the beginning of each school year, must identify and make available software protocols such as NC Wise that can be used to minimize repetitious data entry by teachers. If a local board of education finds that a school improvement plan covers information that the LEA otherwise is required to prepare in another plan, then the LEA may not be required to prepare that other plan.

The act directs the Department of Health and Human Services (DHHS), in consultation with the More at Four Program and the Smart Start Program, to review reporting requirements imposed on the public schools in relation to the operations of those programs and child care regulation requirements, to reduce the frequency of reporting based upon the review, and to report to the General Assembly on the issue by October 1, 2011.

The act repeals a provision that allowed teachers to be prepaid on the monthly pay date for days not yet worked and provides that teachers must be paid only for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited.

This act became effective June 27, 2011, and applies beginning with the 2011-2012 school year. The section of this act prohibiting prepayment to teachers becomes effective July 1, 2012. (DC)

Safe Students Act

S.L. 2011-388 (HB 744) directs principals to require the parent or guardian of any child presented for admission for the first time to that school to furnish a certified copy of the child's birth certificate or other satisfactory evidence of the child's date of birth. If a certified copy of the birth certificate is not available, school authorities may accept other competent and verifiable evidence as secondary proof of age, including:

- A certified copy of any medical record of the child's birth issued by the treating physician or the hospital in which the child was born.

- A certified copy of a birth certificate issued by a church, mosque, temple, or other religious institution that maintains birth records of its members.

This act became effective June 28, 2011, and applies beginning with the 2011-2012 school year. (SK)

Tax Credits for Children with Disabilities

S.L. 2011-395 (HB 344) creates the education expenses tax credit. A taxpayer is entitled to an education expenses tax credit of up to $3,000 per semester for tuition and special education and related services expenses for each "eligible dependent child" who is a resident of North Carolina and who enrolled for one or two semesters during the taxable year in grades Kindergarten-12 at either (i) a nonpublic school or (ii) a public school where tuition is charged for the child's enrollment. For home schools, the credit is equal to the amount the taxpayer paid for special education and related services expenses, not to exceed $3,000. The tax credit allowed may not exceed the amount of tax imposed, reduced by the sum of all credits allowed against the tax, except for payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for three succeeding years.

Qualifications for the Tax Credit. – In order for a child to be an "eligible dependent child," all of the following criteria must be met:

- The child must be a child with a disability who requires an individualized education program (IEP) under Article 9 of Chapter 115C of the General Statutes (Education of Students with Disabilities) and the federal Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq. (2004), as amended. The child must be reevaluated every three years by a local educational agency to verify that the child continues to be a child with a disability.
- The child must receive special education or related services on a daily basis.
- The child must be a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Internal Code for the taxable year.

For the initial eligibility for the tax credit during the first five years that the credit is available, the eligible dependent child must have been enrolled for at least the preceding two semesters in a public school or receiving special education or related services through the public schools as a preschool child with a disability. This initial eligibility requirement is reduced to one semester beginning for taxable years on or after January 1, 2016.

There are two semesters during each taxable year, with the spring semester being the first six months of the taxable year, and the fall semester being the second six months of the taxable year. An eligible dependent child is considered to have been enrolled in a school for a semester if the eligible dependent child is enrolled in that school for more than 70 days during that semester.

Disqualifications for the Tax Credit. – A taxpayer would not qualify for the education expenses tax credit for any semester when the taxpayer's otherwise eligible dependent child was:

- Placed in a nonpublic school or facility by a public agency at public expense.
- Enrolled for any time as a full-time student taking at least 12 hours of academic credit at a postsecondary educational institution.
- 22 years of age or older during the entire semester.
- Graduated from high school prior to the end of the semester.

Reduction of the Tax Credit. – The amount of the education expenses tax credit is reduced for any semester in which the eligible dependent child spent any time enrolled in a public school. The amount of the reduction is equal to the percentage of the semester that the eligible dependent child was enrolled in a public school.

Information Submissions to the Department of Revenue to Claim Education Expenses Tax Credit. – To substantiate the credit, a taxpayer must provide all of the following information, if requested by the Secretary of Revenue:

- The name, address, and social security number of each eligible dependent child for whom the credit is claimed, and the name and address of the school or schools in which the eligible dependent child was enrolled in and attended for more than 70 days of each semester.
- A certification that there were no disqualifying factors.
- The name of the local school administrative unit in which the eligible dependent child resides.
- The amount of the tuition paid to a public school for each semester the eligible dependent child was enrolled in and attended that public school.
- The eligibility determination that the eligible dependent child is a child with a disability who requires special education and related services.
- A listing of the tuition and special education and related services expenses on which the education expenses tax credit is based.
- For home schools, a listing of the special education and related services expenses on which the education expenses tax credit is based.

Fund for Special Education and Related Services. – The act creates the Fund for Special Education and Related Services (Fund), which is a special revenue fund under the control and direction of the State Board of Education. Monies in the Fund are to be used only for special education and related services for children with disabilities, to reimburse local educational agencies for conducting reevaluations for continued eligibility, and to develop revised individualized education programs for children with disabilities. At the end of each fiscal year, the Secretary of Revenue must transfer to the Fund from the net individual income tax collections an amount equal to $2,000, multiplied by the number of education expenses tax credits taken during the fiscal year. Interest and other investment income earned by the Fund accrue to it and monies in the Fund do not revert.

Reporting Requirements. – The Department of Revenue must report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of the education expenses tax credit. The report, due by October 1, 2013, must include the following information:

- The number and amount of education expenses tax credits taken.
- Concerns relating to the administration of the education expenses tax credits or taxpayer compliance.
- Any other matter the Department of Revenue wishes to address with respect to the education expenses tax credit.

This act became effective for taxable years beginning on or after January 1, 2011, and applies to semesters for which the credit is claimed beginning on or after July 1, 2011. For taxable years beginning on or after January 1, 2016, the eligibility requirement that the eligible dependent child must have been enrolled for at least the preceding two semesters in a public school or receiving special education or related services through the public schools as a preschool child with a disability is reduced to one semester. The initial eligibility requirement may be met during semesters prior to July 1, 2011, and July 1, 2016, respectively. Transfers to the Fund will not be made before the 2012-2013 fiscal year. The remainder of this act became effective July 1, 2011. (DC)

Higher Education

Abolish Higher Education Bond Oversight Committee

S.L. 2011-43 (SB 154) repeals the Higher Education Bond Oversight Committee (Committee) which was created in 2000 to oversee implementation of the general obligation bonds issued under the Michael K. Hooker Higher Education Facilities Financing Act. The purpose of the bonds was to finance $2.5 billion of capital facilities for The University of North Carolina

(UNC) and $600 million of capital facilities for the community colleges. In May of 2010, the co-chairs of the Committee formally requested dissolution of the Committee effective December 31, 2010. The Committee recommended that oversight of the remaining community college projects be placed within the Office of State Budget and Management and oversight of the remaining UNC project within The University of North Carolina General Administration. As of September 2010, 318 of 319 UNC projects were closed. As of July 30, 2010, the Community College System Office reported that 94% of the projects had been closed-out or completed, with the last project projected to be completed in July 2012.

This act became effective April 19, 2011. (DC)

Establish Forgivable Loan Fund

S.L. 2011-74 (SB 137) consolidates specific existing scholarship loan programs to establish the new Forgivable Education Loans for Service Program and Fund (Program). The State Education Assistance Authority (Authority) is responsible for establishing and administering the Program. The purpose of the Program is twofold:

- To provide financial assistance to qualified students to prepare them for certain high-need professions, initially targeting future teachers, nurses, and other allied health professionals.
- To respond to current and future employment needs in the State.

All financial obligations to students who received loans from the terminated funds will be honored under the new Program, and all contractual agreements between the Authority and students awarded a scholarship loan from a terminated program before July 1, 2012, will remain enforceable.

The act is a recommendation of the Joint Select Committee on State Funded Student Financial Aid.

The establishment of the Forgivable Education Loans for Service Program became effective July 1, 2011. Repeal of the scholarship loan programs consolidated pursuant to this act and the transfer of all assets and liabilities of those programs will become effective July 1, 2012. (SK)

Advisory Commission on Military Affairs/Modify Membership

S.L. 2011-145, Sec. 9.6A (HB 200, Sec. 9.6A) adds the President of The University of North Carolina and the President of the North Carolina Community College System to the North Carolina Advisory Commission on Military Affairs as ex officio, nonvoting members.

This section became effective July 1, 2011. (PP)

High School Accreditation

S.L. 2011-306 (HB 342) requires the Board of Governors of The University of North Carolina and the State Board of Community Colleges to each adopt a system-wide policy prohibiting any constituent institutions from soliciting or using information regarding the accreditation of any secondary school in the State as a factor in decisions about an applicant's admission, loans, scholarships, or other educational activity at the institution, unless the accreditation of the secondary school has been conducted by a State agency. The State Board of Education (SBE) is authorized to accredit schools upon the request of a local board of education to determine whether the education provided meets acceptable levels of quality. The local school administrative unit must compensate the SBE for the actual costs of the accreditation process.

All receipts collected by the SBE for the accreditation process will be appropriated to the Department of Public Instruction (DPI) for the 2011-2012 and the 2012-2013 fiscal years. DPI is

required to use the funds available within its budget to establish a position to coordinate the accreditation process.

This act became effective June 27, 2011. The new policies apply to academic semesters beginning on or after July 1, 2011. (SK)

No Adult Left Behind

S.L. 2011-327 (SB 166) directs the Commission on Workforce Development to serve as the lead agency and to cooperate with other agencies, such as the Department of Commerce, the Department of Labor, Employment Security Commission, the Community College System, The University of North Carolina, and the North Carolina Independent Colleges and Universities to create the "No Adult Left Behind" initiative. The major goal of this initiative is to increase to 40% the percentage of North Carolinians with two- and four-year degrees. This goal will be achieved through collaboration of the above entities to provide model evening-weekend certificate and degree programs for non-traditional students in high-demand fields and promote systemic changes to increase the accessibility of these programs.

The Commission on Workforce Development must submit an annual report to the Governor and General Assembly beginning on May 1, 2012, which includes annual goals, objectives, and accomplishments towards the implementation of the "No Adult Left Behind" initiative.

This act became effective July 1, 2011. (PP)

Community Colleges

Amend Law Regulating Proprietary Schools

S.L. 2011-21 (SB 20), as amended by S.L. 2011-326, Sec. 16 (SB 148, Sec. 16), repeals and consolidates terminology for proprietary schools. A "proprietary school" is an educational institution having a physical presence in North Carolina and meeting all of the following conditions:

- Is privately owned and operated as a sole proprietorship, partnership, limited liability company, or corporation.
- Is a business or a nonprofit charitable organization.
- Offers instruction to students who have completed elementary and secondary education or are beyond the age of compulsory secondary school attendance and have demonstrated the ability to benefit from instruction.
- Charges tuition or receives any consideration from students for any portion of the instruction, including materials.
- Educates, trains, or claims to educate or train students in a program leading to licensure, employment, or postsecondary degree below the associate degree level.

The new definition of "proprietary school" includes branches of private institutions of another state that are either located in North Carolina or offer educational services or education at a physical location within North Carolina. If a proprietary school has physical locations and classes in more than one county, the operations in each county constitute a separate proprietary school. Schools licensed by The University of North Carolina are not included in the definition of proprietary schools. Classes or schools taught to five or fewer students are no longer exempt from regulation as a proprietary school.

The act requires that school bulletins of proprietary schools provide information on refund policies and regulations that, at a minimum, provide:

- A full refund will be given if a student withdraws before the first day of class, or the proprietary school cancels the class.

- A 75% refund will be given if a student withdraws from a class within the first quarter (25%) of the enrollment period for which the student was charged.

The section of this act specifying the refund policies and regulations applicable to proprietary schools became effective March 31, 2011, and applies beginning with the 2011-2012 academic year.

The remainder of this act became effective July 1, 2011. (DC)

Career and College Promise

S.L. 2011-145, Sec. 7.1A (HB 200, Sec. 7.1A). See **Public Schools** in this chapter.

Implement Alternative Formula Model

S.L. 2011-145, Sec. 8.3 (HB 200, Sec. 8.3) directs the State Board of Community Colleges (SBCC) to consolidate the Health Sciences Allotment, Technical Education Allotment, and Special High Cost Allotment for Heavy Equipment with formula funds to support curriculum instruction. The SBCC must allocate formula funds appropriated to support curriculum instruction and the occupational education component of continuing education through a formula that provides an instructional base allocation to all of the community colleges and allocates remaining funds on a weighted full-time equivalent basis. In making the determination for the appropriate weighting, the SBCC must weigh curriculum courses in high-cost areas such as health care, technical education, and lab-based science courses more heavily than other curriculum courses. The SBCC also must weigh continuing education courses leading to a third-party credential or certification and courses providing an industry-designed curriculum more heavily than other occupational extension courses.

This section became effective July 1, 2011. (DC)

Use of Overrealized Receipts to Support Enrollment Growth Reserve Rather Than Equipment Reserve

S.L. 2011-145, Sec. 8.4 (HB 200, Sec. 8.4) requires that receipts for community college tuition and fees which exceed the amount certified in General Fund Codes at the end of a fiscal year be transferred by the State Board of Community Colleges (State Board) to the Enrollment Growth Reserve (EGR), rather than the Equipment Reserve Fund. Funds in the EGR do not revert to the General Fund and remain available to the State Board until expended. The State Board may allocate funds in the EGR to colleges experiencing enrollment increases greater than 5% of budgeted enrollment levels.

This section became effective July 1, 2011. (KM)

Clarification Regarding Equipment Titled to State Board

S.L. 2011-145, Sec. 8.9 (HB 200, Sec. 8.9) allows community colleges to transfer personal property titled to the State Board of Community Colleges among themselves at no cost and without the approval of the Surplus Property Division of the Department of Administration.

This section became effective July 1, 2011. (PP)

No State Funds for Intercollegiate Athletics

S.L. 2011-145, Sec. 8.10 (HB 200, Sec. 8.10) prohibits the use of any State funds, student tuition receipts, or student aid funds to create, maintain, or operate an intercollegiate

athletics program at a community college.

This section became effective July 1, 2011. (SK)

Community College Tuition Waivers

S.L. 2011-145, Sec. 8.12 (HB 200, Sec. 8.12), as amended by S.L. 2011-391, Sec. 18 (HB 22, Sec. 18), provides clarification concerning the State Board of Community Colleges' (SBCC) authority to provide waivers of tuition and registration fees. Municipal, county, or State law enforcement agencies may now receive waivers. Persons no longer eligible to receive the waivers include:

- Patients in State alcoholic rehabilitation centers.
- Clients of sheltered workshops.
- Clients of adult developmental activity programs.
- Students in Health and Human Services Developmental Programs.
- Juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction.
- Members of the North Carolina State Defense Militia.
- Prison inmates.

The SBCC is prohibited from waiving tuition and registration fees for any individuals or groups not specifically authorized in statute. Community colleges may use State or local funds to pay tuition and registration fees for one course per semester for full-time community college faculty or staff members employed for a nine-, ten-, eleven-, or twelve-month term.

The Community Colleges System Office is directed to transfer funds appropriated for curriculum and continuing education instruction to the Department of Correction for use in paying tuition and fees for prisoners, but the section provides for a reduction of up to 43% in the number of curriculum and continuing education courses provided to prisoners. Federal law enforcement officers, firefighters, EMS personnel, and rescue and lifesaving personnel with permanent duty stations in North Carolina are eligible for the State resident community college tuition rate for courses that support their organizations' training needs and that have been approved for that purpose by the SBCC.

This section became effective July 1, 2011. (DC)

Funding for Multicampus Centers

S.L. 2011-145, Sec. 8.13 (HB 200, Sec. 8.13) requires that all multi-campus centers approved by the State Board of Community Colleges receive funding under the same formula.

This section became effective July 1, 2011. (KM)

Community College Audits

S.L. 2011-145, Sec. 8.15 (HB 200, Sec. 8.15) requires that each community college be audited at least once every two years by the State Auditor or a certified public accountant. The colleges must submit the results of the audits to the State Board of Community Colleges.

This section became effective July 1, 2011. (SK)

Exempt Community Colleges from Administrative Procedure Act

S.L. 2011-145, Sec. 8.18 (HB 200, Sec. 8.18), as amended by S.L. 2011-391, Sec. 19 (HB 22, Sec. 19), exempts the State Board of Community Colleges from the Administrative Procedure

Act except for construction contract claims and the right to judicial review under the Administrative Procedure Act.

This section became effective July 1, 2011. (DC)

Capital Improvements at Community Colleges

S.L. 2011-145, Sec. 8.19 (HB 200, Sec. 8.19) allows the State Board of Community Colleges (SBCC) to conduct fee negotiations for design contracts, develop procedures governing the responsibility of the North Carolina Community College System to perform the duties of the Department of Administration (DOA) and the Office of State Construction, and use existing plans and specifications for construction projects for State funded property developments up to $4 million. Non-State funded capital improvement projects are exempted from the authority of the DOA when the SBCC determines the community college has the expertise to manage the project, and no assistance from the Office of State Construction is requested.

This section became effective June 15, 2011, and applies to projects initiated on or after that date. (KM)

Granting Community Colleges Additional Flexibility with Regard to Investments

S.L. 2011-145, Sec. 8.20 (HB 200, Sec. 8.20) grants community colleges additional investment flexibility with institutional funds by allowing community colleges to invest in any investments permitted for county governments or managed by an investment advisor who meets certain criteria. The Board of Trustees must appoint an Investment Committee to review and evaluate investment options. The Board must consider specific criteria in investing, including making investments solely in the interest of the college and to provide adequate return.

This section became effective July 1, 2011. (PP)

Community College Budget Flexibility

S.L. 2011-145, Sec. 8.21 (HB 200, Sec. 8.21), as amended by S.L. 2011-391, Sec. 20 (HB 22, Sec. 20), was repealed by S.L. 2011-412 (HB 335, Sec. 3.3). (KM)

Education/State Board Authority to Establish General Education Development Testing Fees

S.L. 2011-145, Sec. 31.2 (HB 200, Sec. 31.2) provides the State Board of Community Colleges may establish fees charged to students taking the General Education Development (GED) test including fees for retesting.

This section became effective July 1, 2011. (DC)

Community College Opt Out of Federal Loan Program

S.L. 2011-148 (HB 15), S.L. 2011-154 (HB 541), S.L. 2011-155 (HB 58), and S.L. 2011-178 (HB 134) allow certain community colleges to opt out of participating in the William D. Ford Federal Direct Loan Program (Program) if the board of trustees of the community college adopts a resolution declining to participate in the Program. If the board of trustees of the community college chooses to rescind the resolution and participate in the Program, the board of trustees may not again decline to participate in the Program.

The following community colleges are authorized to opt out of participation in the Program:

- S.L. 2011-148 (HB 15): Beaufort County Community College, Brunswick Community College, Cleveland Community College, James Sprunt Community College, Lenoir Community College, Sandhills Community College, and Surry Community College.
- S.L. 2011-154 (HB 541): Alamance Community College, Central Piedmont Community College, Gaston College, Mitchell Community College, Montgomery Community College, Randolph Community College, Richmond Community College, Robeson Community College, Stanly Community College, and Wilkes Community College.
- S.L. 2011-155 (HB 58): Caldwell Community College and Technical Institute, Martin Community College, Rockingham Community College, and Sampson Community College.
- S.L. 2011-178 (HB 134): Central Carolina Community College, Pamlico Community College, Rowan Cabarrus Community College, South Piedmont Community College, and Vance Granville Community College.

These acts became effective July 1, 2011. (KM)

Community College Tuition for Members of Military

S.L. 2011-184 (HB 515). See **Military, Veterans', and Indian Affairs**.

Modify Regulation of Proprietary Schools

S.L. 2011-308 (SB 685) creates the State Board of Proprietary Schools (SBPS) within the North Carolina Community Colleges System Office to oversee the licensing of proprietary schools in the State. The SBPS must provide the State Board of Community Colleges (SBCC) with written recommendations concerning applicants for licenses and annual renewal applications for licenses, and prepare a certificate of license for approval by the SBCC. The SBPS is authorized to establish reasonable fees for licenses, renewals, and approvals granted and for inspections.

The act requires the SBPS to report annually to the SBCC on the number of schools receiving initial licenses during the previous year. The report also must provide a list of currently licensed proprietary schools, along with information on school closures, complaints and resulting actions, total fees received, and balances of the Commercial Education and Student Protection Funds.

The establishment of the SBPS becomes effective January 1, 2012. (SK)

Extend Small Business Center Incubator Period

S.L. 2011-331 (SB 287) allows small business incubators at community colleges to extend the time period of the services offered to qualified new business ventures, increasing it from 24 to 48 months. A community college can permit the use of its personnel or facilities in support of, or by, a private business enterprise located on the community college campus or its service areas in support of specific services for economic development, if the board of trustees of the college has specifically approved the use of the facilities or personnel. These specific services include small business incubators which are sites for new business ventures that are located within a community college's service area and which are not likely to succeed without the support and assistance provided by the college.

This act became effective June 27, 2011. (DC)

Universities

Center for Public Television Continuation Review

S.L. 2011-145, Sec. 9.1 (HB 200, Sec. 9.1) requires The University of North Carolina General Administration and the Center for Public Television (UNC-TV) to prepare a continuation review to assist the General Assembly in determining whether to continue, reduce, or eliminate funding for UNC-TV. The review must be submitted to the House and Senate Appropriations Subcommittees on Education by March 31, 2012.

This section became effective July 1, 2011. (SK)

University Cancer Research Fund Reporting Requirement

S.L. 2011-145, Sec. 9.4 (HB 200, Sec. 9.4) requires the Cancer Research Fund Committee of the University Cancer Research Fund to provide an annual financial report by November 1 of each year to the Joint Legislative Education Oversight Committee and to the Office of State Budget and Management. The report must include the following components:

- Accounting of expenditures of State funds related to strategic initiatives, development of infrastructure, and ongoing administrative functions.
- Accounting of expenditures of extramural funds related to strategic initiatives, development of infrastructure, and ongoing administrative functions.
- Measures of impact to the State's economy in the creation of jobs, intellectual property, and start-up companies.
- Other performance measures directly related to the investment of State funds.
- Accounting of any fund balances retained by the University Cancer Research Fund, along with information about any restrictions on the use of these funds.

This section became effective July 1, 2011. (DC)

The University of North Carolina Board of Governors Review of Faculty Recruitment and Retention

S.L. 2011-145, Sec. 9.5 (HB 200, Sec. 9.5) requires the Board of Governors of The University of North Carolina to review current policies regarding financial incentives to retain faculty. The review must focus on prioritization of recruitment and retention funds and identification of key metrics to measure overall program effectiveness. The Board of Governors must report findings and recommendations to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division by April 1, 2012.

This section became effective July 1, 2011. (KM)

Allow Chancellors of Constituent Institutions to Approve Certain Repair and Maintenance Projects and Fund Those with Available Operating Funds

S.L. 2011-145, Sec. 9.6C (HB 200, Sec. 9.6C) authorizes the chancellors of The University of North Carolina constituent institutions to approve the expenditure of up to $1 million in operating funds for institutional repairs, renovations, maintenance, or related equipment purchases. Obligated funds will not revert at the end of the fiscal year but remain available until the completion of the project.

This section became effective July 1, 2011. (SK)

Amend Regulation of The University of North Carolina Institutional Trust Funds and Funds of The University of North Carolina Health Care System

S.L. 2011-145, Sec. 9.6E (HB 200, Sec. 9.6E) allows the Board of Governors of The University of North Carolina to authorize chancellors to deposit each institution's available trust fund cash balances in interest-bearing accounts and other investments authorized by the Board of Governors, without regard to any statute or rule of law relating to the investment of funds by fiduciaries. Trust funds are no longer required to be deposited with the State Treasurer.

The Board of Directors of The University of North Carolina Health Care System may deposit available funds, including money received in respect to borrowing for capital equipment or construction projects to further services, in interest-bearing accounts and other investments in its sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries. Available funds are no longer required to be deposited with the State Treasurer.

This section became effective July 1, 2011. (KM)

The University of North Carolina/Institutional Expenditure Benchmarks

S.L. 2011-145, Sec. 9.6F (HB 200, Sec. 9.6F) broadens the circumstances under which constituent institutions of The University of North Carolina may make purchases without oversight from the Department of Administration's Division of Purchase and Contract (Division).

For constituent institutions that have an independent expenditure benchmark established by the Board of Governors at greater than $250,000, only offers received in competitive bid procedures above the independent expenditure benchmark must be submitted to the Division for decision and recommendation.

This section became effective July 1, 2011. (PP)

The University of North Carolina Assumes Responsibility for Quality Acceptance Inspection Process

S.L. 2011-145, Sec. 9.6G (HB 200, Sec. 9.6G) exempts constituent institutions of The University of North Carolina from oversight by the Department of Administration and its inspection to determine the quality of purchased supplies, materials, equipment, and related delivered goods. The section requires the President of The University of North Carolina to issue regulations or guidelines for use by the constituent institutions in conducting quality inspections to ensure that deliveries comply with specifications.

This section became effective October 1, 2011. (SK)

Consolidate Assets of Millennium Teaching Scholarship Loan Program and Prospective Teachers Scholarship Loan Fund/Give Priority for Scholarship Loans for Prospective Teachers to Certain Former Teacher Assistants

S.L. 2011-145, Sec. 9.10 (HB 200, Sec. 9.10) abolishes the Millennium Teaching Scholarship Loan Program (MTSLP) effective January 1, 2012. Financial obligations to students awarded scholarship loans from the MTSLP (scholarship students) before January 1, 2012, must be fulfilled with funds from the Scholarship Loan Fund for Prospective Teachers, if the scholarship

student remains eligible under the provisions of the MTSLP. Contractual agreements between the scholarship student and the State Education Assistance Authority (SEAA) regarding the loan remain enforceable. $500,000 of the assets of the MTSLP are transferred to the Escheat Fund, and the remaining balance is transferred to the Scholarship Loan Fund for Prospective Teachers.

When awarding scholarship loans for the Scholarship Loan for Prospective Teachers Program, the SEAA must give priority to qualified applicants formerly employed as teacher assistants at a public school in North Carolina who lost their position as a result of a reduction in force.

This section became effective July 1, 2011. (KM)

Limit Certain Financial Aid Grants to the Traditional Time Period Required to Earn a Baccalaureate Degree

S.L. 2011-145, Sec. 9.11(a) (HB 200, Sec. 9.11(a)) limits the length of time a student may receive The University of North Carolina Need-Based Financial Aid grant to nine full-time academic semesters, or the part-time equivalency. For five-year degree programs, the grant may be received for eleven full-time academic semesters, or the part-time equivalency. An additional semester may be granted upon demonstration of certain circumstances that disrupted the student's degree pursuit.

This section became effective July 1, 2011. The limitation on length of time for grants is effective beginning with the 2012-2013 academic year. (PP)

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

Academic Common Market

S.L. 2011-145, Sec. 9.12 (HB 200, Sec. 9.12) phases out the State's participation in the Academic Common Market program.

The section provides that the Board of Governors of The University of North Carolina may not accept new students and no new students may enroll through the Academic Common Market program into The University of North Carolina graduate programs for the 2012-2013 academic year. Students enrolled prior to the 2012-2013 academic year may continue to pay in-State tuition as long as the student is enrolled in the program.

This section became effective July 1, 2011. (SK)

Eliminate Private Medical School Aid

S.L. 2011-145, Sec. 9.14 (HB 200, Sec. 9.14) repeals the statute providing for annual grants of $5,000 for each academic year to medical students who are North Carolina residents and who enroll in and attend medical school at either Duke University or Wake Forest University.

This section became effective July 1, 2011. (KM)

Special Responsibility Constituent Institution Audits

S.L. 2011-145, Sec. 9.16 (HB 200, Sec. 9.16) requires annual audits of The University of North Carolina's special responsibility constituent institutions by the State Auditor or a certified public accountant. The audits must be given to the Chancellor and Board of Trustees of the special responsibility institution, the Board of Governors of The University of North Carolina, and the State Auditor.

This section became effective July 1, 2011. (SK)

Need-Based Scholarships for Students Attending Private Institutions of Higher Education

S.L. 2011-145, Sec. 9.18 (HB 200, Sec. 9.18) creates the "Need-Based Scholarships for Students Attending Private Institutions of Higher Education" (Scholarship Program). To be eligible for a scholarship under this Scholarship Program, a student must be seeking a degree, diploma, or certificate at an eligible private postsecondary institution in this State.

The student seeking the degree, diploma, or certificate must meet all of the following requirements:

- Be a "needy North Carolina student," which is defined as a student whose expected family contribution under the federal methodology does not exceed an amount as set annually by the State Education Assistance Authority (Authority), based upon costs of attendance at The University of North Carolina.
- Be eligible for the federal Pell Grant, with the exception of the expected family contribution.
- Be a legal resident of North Carolina and a resident for tuition purposes, in accordance with the definition of residency as adopted by the Board of Governors of The University of North Carolina.
- Be admitted, enrolled, and classified as an undergraduate student in a matriculated status at an eligible private postsecondary institution.
- Maintain satisfactory academic progress in a course of study for continued eligibility in the student's second and subsequent academic years, in accordance with the standards and practices used for federal Title IV programs.

Limitations on Scholarship. – A student cannot receive a scholarship under this Scholarship Program for more than nine full-time academic semesters or the equivalent if enrolled part-time, unless the student is enrolled in a program officially designated by the eligible postsecondary institution as a five-year degree program. For a student enrolled in such a five-year degree program, the student cannot receive the scholarship for more than 11 full-time academic semesters or the equivalent if enrolled part-time.

Scholarship Amounts. – The amount for scholarships awarded under the Scholarship Program will be determined annually by the Authority, based upon the enrollment status and expected family contribution of the student consistent with the methodology for the federal Title IV programs and subject to the sum appropriated by the General Assembly. The minimum award of a scholarship under this Scholarship Program is $500.

Administration of Scholarship Program. – The Scholarship Program will be administered by the Authority under rules adopted by it. The Authority may use up to 1.5% of the funds appropriated for the Scholarship Program for administrative purposes. Unexpended funds will remain available for future scholarships awarded under the Scholarship Program.

Effective July 1, 2012, this section repeals the State Contractual Scholarship Fund Program, the North Carolina Legislative Tuition Grant Program, and State grants for eligible students attending certain private institutions of higher education. The Authority must report to the Joint Legislative Education Oversight Committee by June 1, 2013, on the implementation of the Scholarship Program. The report must contain, for the 2012-2013 academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible private postsecondary institutions that received the funds.

The Scholarship Program became effective July 1, 2011, and applies to the 2012-2013 academic year and each subsequent academic year. (DC)

Constituent Institutions May Purchase Motor Vehicles Independent of Motor Fleet Management

S.L. 2011-145, Sec. 9.19 (HB 200, Sec. 9.19) allows the constituent institutions of The University of North Carolina to purchase passenger motor vehicles used primarily for law enforcement purposes independent of the central motor pool of the Department of Administration.

This section became effective July 1, 2011. (KM)

Behavioral Health Services for Military

S.L. 2011-185, Sec. 10 (SB 597, Sec. 10). See **Military, Veterans', & Indian Affairs**.

Studies

New/Independent Studies/Commissions

Study Length of School Year

S.L. 2011-257 (HB 765) establishes a 19-member Blue Ribbon Commission (Commission) to study the current length of the school year. The Commission is composed of ten members appointed by the leadership of the General Assembly (five members of the House and five members of the Senate), executive directors of various educational organizations, the chair of the State Board of Education, and the Superintendent of Public Instruction.

The Commission is directed to study and report to the General Assembly in 2012 and 2013 about strategies for making North Carolina's children ready to compete in the 21st century, costs for implementing a longer school year, impact of summer learning loss, costs of remediation, the impact of the current calendar on low-income and at-risk students and on math and science scores, and the achievement gap.

This act became effective July 1, 2011. (PP)

Referrals to Existing Commissions/Committees

Education Reform in North Carolina

S.L. 2011-145, Sec. 7.1 (HB 200, Sec. 7.1) directs the Joint Legislative Education Oversight Committee (Committee) to study literacy and ways to reduce the need for remedial or developmental education in the State's higher education institutions. The Committee must report with a comprehensive plan, including implementation dates and schedules that address the following:

- Implementation of a third grade literacy policy and consideration of a program for third grade reading specialists modeled on Florida's reading specialist program.
- Ways to hold high schools accountable for the higher education performance of their students, including requiring high schools to fund developmental education.
- Cost-effective methods to provide remedial education in higher education, including funding summer term development courses at community colleges, focusing remediation at the community colleges, and redirecting university appropriations for remedial education at the community colleges.

Any program implemented must be structured so that ongoing performance can be evaluated and outcome data is available. The Committee may hire one or more external consultants to complete the studies. The Committee must make a final report to the 2012 Regular Session of the 2011 General Assembly.

This section became effective July 1, 2011. (DC)

Referrals to Departments, Agencies, Etc.

Study Community College Performance Measures

S.L. 2011-145, Sec. 8.14 (HB 200, Sec. 8.14) requires the State Board of Community Colleges to report to the Joint Legislative Education Oversight Committee by March 1, 2012, on a revised set of accountability measures and performance standards to evaluate and measure student progress and success, including graduation rates and course completion, and a plan to incorporate the measures into regular formula funding.

This section became effective July 1, 2011. (PP)

Limit Certain Financial Aid Grants to the Traditional Time Period Required to Earn a Baccalaureate Degree

S.L. 2011-145, Sec. 9.11(b) (HB 200, Sec. 9.11(b)) requires the Fiscal Research Division to study and report to the General Assembly on how to limit receipt of State grants to the designated length of time for students who transfer between the university, community college, and private college systems, waivers for students who encounter legitimate disruptions, and procedures for extending eligibility. The report is due by March 1, 2012, to the Joint Legislative Education Oversight Committee and to the Education Appropriation Subcommittees of the House of Representatives and the Senate.

This section became effective July 1, 2011. (PP)

Vetoed Legislation

Community Colleges/Opt Out of Federal Loan Program

HB 7. See **Vetoed Legislation.**

No Dues Checkoff for School Employees

SB 727. See **Vetoed Legislation.**

Chapter 10
Energy

Heather Fennell (HF), Jeff Hudson (JH), Jennifer McGinnis (JLM), Jennifer Mundt (JM)

Enacted Legislation

Require Labels for Ethanol-Blended Gasoline

S.L. 2011-25 (HB 187) directs the Gasoline and Oil Inspection Board to adopt rules requiring the use of labels on dispensing devices that offer ethanol-blended gasoline for retail sale in this State. The labels must indicate the gasoline contains either 10% or less ethanol by volume, or greater than 10% ethanol by volume. The Board is authorized to adopt rules that require more specific information with regard to the ethanol content of blended gasoline.

This act became effective April 7, 2011. (HF)

Promote Electricity Demand Reduction

S.L. 2011-55 (SB 75) adds "electricity demand reduction" to the methods that public utilities, electric cooperatives, and electricity-supplying municipalities may employ to meet their North Carolina renewable energy and energy efficiency portfolio standard (REPS) requirements. The REPS requires electric power suppliers to use an increasing percentage of renewable energy resources and employ energy efficiency programs to meet the needs of the State's retail electricity customers.

The act defines "Electricity demand reduction" as "a measurable reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric power supplier and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of standards."

This act became effective April 28, 2011. (HF)

Authorize Board of Governors to Permit North Carolina State University to Self-Perform Energy Conservation Measures

S.L. 2011-145, Sec. 9.6D (HB 200, Sec. 9.6D) authorizes the Board of Governors of the University of North Carolina (Board) to allow North Carolina State University to implement an energy conservation measure without entering a guaranteed energy savings contract if the energy conservation measure is for an existing building or utility system, or if the energy savings resulting from the implementation of the conservation measures will equal or exceed the total cost of implementing the measure. If the implementation will be financed with debt, the projected energy savings must be sufficient to pay the debt service. The Board may authorize the implementation of multiple energy conservation measures simultaneously as part of a single project.

Prior to implementing an energy savings measure, an energy savings analysis must be performed by a third party to validate the economic assumptions supporting implementation of the measure. The analysis must include a baseline of previous costs of energy consumption for the campus on the assumption that the energy conservation measure was not undertaken, and must be submitted to The University of North Carolina General Administration and the State Energy Office.

An annual measurement and verification of energy savings resulting from the conservation measure must be provided each year. Though the campus must pay for any

shortfall in energy savings, it is not responsible for losses from natural disasters or other emergencies. Surpluses remain with the campus and may be used as other energy savings.

Appropriations to the Board on behalf of a campus will not be reduced because of the campus' realization of energy savings under the energy conservation measures, and the amount of appropriations will be determined as if no energy savings had been realized.

This section became effective July 1, 2011. (HF)

Use of Payments for Low Income Energy Assistance Program and Crisis Intervention Program

S.L. 2011-145, Sec. 10.56 (HB 200, Sec. 10.56) establishes new requirements for payments to recipients under the Low-Income Energy Assistance Program (LIEAP) and the Crisis Intervention Program (CIP). The program plan for LIEAP developed by the Department of Health and Human Services (Department) must focus annual energy assistance payments on participants who are either: (i) 60 years of age and older with an income below 130% of the federal poverty level, or (ii) disabled persons receiving services through the Department's Division of Aging and Adult Services. The program plan for CIP must provide assistance to persons who meet income eligibility requirements set by the Department. Payments under CIP may not exceed $600 per year. Payments under both programs must be paid directly to the service provider.

This section became effective July 1, 2011. (HF)

Local Energy Efficiency

S.L. 2011-150 (HB 266) adds Wake and Mecklenburg Counties, and the 11 towns in Wake County, to the list of units of local government exempt from competitive bidding requirements for local pilot programs aimed at increasing energy efficiency. The act also exempts these units of local government from the statutory requirement of treating a long-term lease as a sale for the siting and operation of a renewable energy facility.

This act became effective June 16, 2011. The exemption from competitive bidding requirements for local pilot programs aimed at increasing energy efficiency expires June 30, 2015. (JM)

Energy Crops for Biofuels Feedstocks

S.L. 2011-198 (SB 378). See **Agriculture**.

Natural Gas/Bond/Fee/Landowner Protection/Study

S.L. 2011-276 (HB 242) makes changes to laws governing oil and gas exploration and extraction in the State, and directs a study of related issues. Specifically the act:

- Increases the amount of the bond required upon registration in order to drill for oil or natural gas in the State.
- Increases the amount of fees applicable to drilling and abandoning oil or gas wells.
- Directs the Department of Environment and Natural Resources (DENR) to study a number of issues pertaining to oil and gas exploration in the State, specifically the use of directional and horizontal drilling and hydraulic fracturing for that purpose. At a minimum, the issues include: oil and gas reserves present in the State; methods of exploration for oil and gas, including directional and horizontal drilling and hydraulic fracturing; and potential environmental and social impacts, as well as impacts on infrastructure, which may arise from drilling by means of hydraulic fracturing. The Consumer Protection Division of the Department of Justice is tasked with studying

relevant consumer protection and legal issues. The Department of Commerce is directed to study potential economic impacts that may arise from drilling by means of hydraulic fracturing. These entities are required to report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012.

- Directs DENR to conduct at least two public hearings by February 1, 2012, in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur, in order to promote awareness of the issue generally and inform and consult with the public and user groups on: potential environmental impacts; potential regulatory controls; potential economic impacts; and consumer protection issues, including landowner rights and mineral leases.
- Establishes certain protections for owners of land on which drilling or exploration for oil or gas may occur (surface owners), including: notice requirements for entry to such property; required compensation that an oil and gas developer must pay a surface owner for damages resulting from drilling activities on the property; indemnification of the surface owner for damages caused by drilling activities to adjacent properties; and establishment of maximum lease terms. These provisions apply to leases or contracts, and amendments to leases or contracts, entered into on or after June 15, 2011.

This act became effective June 23, 2011. (JLM)

Renewable Energy and Energy Efficiency Portfolio Standard Credits at Cleanfields Parks

S.L. 2011-279 (SB 484) amends the Cleanfields Act of 2010, which provides that any electric power or renewable energy certificates (RECs) generated at a biomass renewable energy facility located in the cleanfields renewable energy demonstration park and purchased by an electric power supplier will be given triple credit towards the renewable energy and energy efficiency portfolio standard (REPS). The act provides for the triple credit to be applied as follows:

- Additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity are eligible to satisfy the requirements of the poultry waste set aside.
- Once the poultry waste set aside has been fully satisfied, the additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity will be assigned to the overall REPS requirements.
- The triple credit only applies to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields parks in the State.

This act became effective June 23, 2011. (JH)

Poultry Waste Renewable Energy Certificates (RECS)

S.L. 2011-309 (SB 710) provides that thermal energy generated by a combined heat and power facility that uses poultry waste as fuel can count towards the poultry waste set-aside. The poultry waste set-aside is a portion of a power supplier's renewable energy and energy efficiency portfolio standard (REPS) requirement, and is met through the use of poultry waste combined with wood shavings, straw, rice hulls, or other bedding material.

This act became effective June 27, 2011. (JH)

Vetoed Legislation

Energy Jobs Act

SB 709. See **Vetoed Legislation.**

Chapter 11
Environment and Natural Resources

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

Enacted Legislation

Energy

Natural Gas/Bond/Fee/Landowner Protection/Study

S.L. 2011-276 (HB 242). See **Energy**.

Environmental Health

Modify Public Swimming Pool Requirements

S.L. 2011-39 (SB 368):

- Prohibits the Department of Environment and Natural Resources (DENR) from denying an operation permit to an owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, if the denial is based solely on the owner or operator's failure to comply with certain fencing requirements, such as the size of chain link, spacing of cut-outs, and the size of the gap between the bottom of the fence and the ground. DENR may, however, deny an operation permit to an owner or operator that fails to comply with these provisions when (1) at least 50% of the fence has been damaged or destroyed, (2) the owner or operator elects to replace the fence, or (3) the owner or operator fails to comply with any other rules for public swimming pools.
- Prohibits DENR from denying an operation permit to an owner or operator of an interactive play attraction based solely on the owner or operator's failure to comply with the rule that requires dressing and sanitary facilities.
- Prohibits DENR, until July 1, 2012, from requiring owners and operators of public swimming pools to comply with the rule that requires a wading pool to be separated from a swimming pool by a fence or other structure and directs the Commission for Public Health to review the safety benefits of the rule and report its findings and recommendations to the Joint Regulatory Reform Committee by March 1, 2012.

This act became effective April 12, 2011. (JH)

Fisheries

Oyster Sanctuary Program Support

S.L. 2011-145, Sec. 13.18 (HB 200, Sec. 13.18) encourages the Marine Fisheries Commission and the Wildlife Resources Commission to consider supporting the Oyster Sanctuary Program managed by the Division of Marine Fisheries of the Department of Environment and Natural Resources.

This section became effective July 1, 2011. (MM)

Marine Fisheries Encouraged to Contract with Private Sector for Oyster Sanctuary Restoration

S.L. 2011-145, Sec. 13.18A (HB 200, Sec. 13.18A) encourages the Division of Marine Fisheries of the Department of Environment and Natural Resources to contract with private sector businesses for any oyster sanctuary restoration projects in the Pamlico Sound funded in whole or in part with State funds, State fees, State grants, or revenue generated from any license issued by the State.

This section became effective July 1, 2011. (MM)

Miscellaneous

Abolish, Transfer to other Departments, or Consolidate within the Department of Environment and Natural Resources (DENR) All Environmental Health Programs under DENR

S.L. 2011-145, Sec. 13.3 (HB 200, Sec. 13.3), as amended by S.L. 2011-391, Sec. 27 (HB 22, Sec. 27), abolishes the Division of Environmental Health (DEH) of the Department of Environment and Natural Resources (DENR) and subsequently eliminates, transfers, or consolidates all functions, powers, duties, and obligations previously vested in DEH. If transferred or consolidated, the programs have been placed within the Department of Health and Human Services, DENR, the Department of Agriculture and Consumer Services, or retained by that local health department.

The transfers under this section became effective July 1, 2011, and funds transferred must be net of any changes enacted by this section. References to any program, office, section, division, or department transferred under this section must be construed to be consistent with the transfer under this section.

This section became effective July 1, 2011. (MM)

Department of Environment and Natural Resources Civil Penalty Assessments

S.L. 2011-145, Sec. 13.6 (HB 200, Sec. 13.6) directs the Department of Environment and Natural Resources to extend by 10 days the period of time between the date the violator is sent a notice of violation of an environmental statute or an environmental rule and the subsequent date the violator is sent an assessment of the civil penalty for the violation.

This section became effective July 1, 2011. (MM)

Transfer Division of Soil and Water Conservation and Soil and Water Conservation Commission to Department of Agriculture and Consumer Services

S.L. 2011-145, Sec. 13.22A (HB 200, Sec. 13.22A), as amended by S.L. 2011-391, Sec. 32 (HB 22, Sec. 32), transfers the Division of Soil and Water Conservation, including all its statutory authority, powers, duties, and functions, from the Department of Environment and Natural Resources (DENR) to the Department of Agriculture and Consumer Services (DACS). This section also transfers the Soil and Water Conservation Commission from DENR to DACS such that

the Commission will continue to independently exercise all its prescribed statutory powers save any management functions which will be performed under the direction and supervision of Commissioner of Agriculture. This section also makes technical and conforming changes related to these transfers.

This section became effective July 1, 2011. (JM)

Transfer Forestry Division and Forestry Council from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services

S.L. 2011-145, Sec. 13.25 (HB 200, Sec. 13.25), as amended by S.L. 2011-391, Secs. 33(a) and 33(b) (HB 22, Secs. 33(a) and 33(b)), transfers the Division of Forest Resources (DFR) and the Forestry Council, including all of their functions, powers, duties, and obligations previously vested in the Department of Environment and Natural Resources (DENR) to the Department of Agriculture and Consumer Services (DACS).

DACS will be responsible for caring for the State forests and recreational forests, including forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests.

The section also provides that DuPont State Forest is designated as a State Recreational Forest. DACS must manage DuPont State Recreational Forest: (1) primarily for natural resource preservation, scenic enjoyment and recreational purposes, including horseback riding, hiking, bicycling, hunting, and fishing; (2) so as to provide an exemplary model of scientifically sound, ecologically-based natural resource management for the social and economic benefit of the forest's diverse community of users; and (3) consistent with the grant agreement between the Natural Heritage Trust Fund and the Division of Forest Resources, which grant designates a portion of the forest as a North Carolina Nature Preserve. In addition, DACS may use the forest for the demonstration of different forest management and resource protection techniques for local landowners, natural resource professionals, students, and other forest visitors.

DACS must report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on the Department's management activities at DuPont State Recreational Forest during the preceding fiscal year and plans for management of DuPont State Recreational Forest for the upcoming fiscal year.

This section became effective July 1, 2011. (MM)

Amend Environmental Laws 2011

S.L. 2011-394 (HB 119) amends certain environmental and natural resources laws as follows:

- Exempts certain new renewable energy facilities from best available control technology (BACT) requirements. BACT means an emissions limitation based on the maximum degree of reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental and economic impacts and other costs.
- Reduces certain open burning minimum setback requirements:
  - Open burning for land clearing or right-of-way maintenance without an air quality permit must be at least 500 feet (previously 1,000 feet) from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

- Air curtain burning must be at least 300 feet (previously 500 feet) from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

The act also provides that minimal, unintentional non-compliance with an open burning setback is not a violation.

- Provides that draft erosion and sedimentation control plans for the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, may be submitted without a landowner's written consent, if the landowner has been provided prior notice of the project.
- Clarifies that the prohibition on the disposal in landfills or by incineration of beverage containers required to be recycled by certain Alcoholic Beverage Control (ABC) permittees applies only to ABC permittees.
- Provides that for purposes of the program for the removal of mercury containing products from public buildings, a political subdivision of the State "using State funds" means the political subdivision has received grant funding from the State for the construction or operation of the public building.
- Directs the Environmental Management Commission (EMC) to develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and to make the information on those model practices available to State agencies and local governments.
- Prohibits the Division of Water Quality of the Department of Environment and Natural Resources (DENR) from requiring a water quality permit for a Type I solid waste compost facility, unless required to do so by federal law. Type I facilities may receive yard and garden waste, silvicultural waste, and untreated and unpainted wood waste.
- Amends the outdoor potable water use standard for public major facility construction projects to require the use of weather-based irrigation controllers. This provision applies only to projects that have not entered the schematic design phase by the effective date of the act.
- Provides that no permit will be required to enter into a contract for the construction, installation, or alteration of any treatment works or disposal system or to construct, install, or alter any treatment works or disposal system when the system's or work's principle function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State. Notwithstanding the above, the permit issued for the discharge may be modified if required by federal regulation.
- Makes the following changes to the Dam Safety Act:
  - Exempts a dam constructed for the purpose of providing water for agricultural use when a licensed professional engineer designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Land Resources of DENR. The exemption, however, does not apply to dams determined to be high-hazard by DENR.
  - Expands the exemption for small dams by increasing the height threshold from 15 feet to 25 feet and increasing the impoundment capacity threshold from less than 10 acre-feet to less than 50 acre-feet.

  The dam safety exemption provisions apply retroactively to any dam that is the subject of an enforcement action that has not been resolved as of June 1, 2011.
- Makes various changes to the laws governing the State's Underground Storage Tank Program and petroleum discharges.

- Clarifies that costs associated with a site investigation required by DENR for the purpose of determining whether a discharge of petroleum from an underground storage tank (UST) system has occurred are reimbursable, whether or not the investigation confirms a discharge has occurred. Costs resulting from investigations that are part of routine leak detection procedures required by statute or rule, however, are not reimbursable.
- Amends the statute governing the reimbursement of costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund ("Commercial Fund") for cleanup of multiple discharges at the same facility. The provision specifies that if an owner or operator elects to clean up a separate discharge ***for which the owner or operator is not responsible***, the party responsible for the other discharge cannot be identified, and the discharges are commingled, the owner or operator is responsible only for those costs applicable to the discharge for which the owner or operator is actually the responsible party. This provision applies to discharges or releases reported on or after January 1, 2009.
- Establishes a process to assist in cases of severe financial hardship, requiring DENR to use up to $1 million of the funds in the Commercial Fund and $100,000 from the Non-Commercial Fund, to fund necessary assessment and cleanup to be conducted by DENR of discharges for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The provision directs the EMC to adopt rules in this regard, which, among other things, provide that determinations of eligibility for such assistance will be made by a subcommittee of the penalty remissions committee of the EMC.
- Modifies certain requirements applicable to USTs, including: (i) amending the statute that mandates adoption of rules requiring secondary containment for all components of USTs, to clarify that the provision is not to be construed to limit the right of an owner or operator to repair any existing component of a UST; and (ii) requiring DENR to allow non-tank unprotected metallic components, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test.
- Extends, from January 1, 2016, to January 1, 2020, the final deadline of a rule requiring certain USTs to meet well setback requirements or provide secondary containment for the system. The EMC is directed to establish a variance process applicable to the setbacks required for UST systems from certain public water supply wells, if the EMC finds facts to demonstrate that a variance would not endanger human health and welfare or groundwater.
- Provides that the rule using the distance between a source area of a confirmed discharge from a UST to a water supply well or a private drinking water well to determine the risk of a discharge must include a determination whether a nearby well is likely to be affected by the discharge as a factor in determining the level of risk.
- Provides that, from the effective date of this act, DENR cannot prohibit the use of cathodically protected steel tanks to meet external corrosion protection standards, and requires the EMC to adopt rules accordingly by January 1, 2014.

The provisions concerning USTs became effective July 1, 2011, and apply to discharges or releases reported on or after that date.

- Directs the EMC to adopt rules to identify acceptable uses of gray water, facilitate the permitting of gray water systems, and establish standards for gray water; provides for gray water systems to be regulated by DENR under rules adopted by the EMC;

and provides that a city may not prohibit the installation and maintenance of cisterns and rain barrels.

- Clarifies that the nutrient offset payment schedule set out in session law will expire when the rules establishing the new payment schedule become effective.
- Modifies implementation of the Jordan Lake Rules under S.L. 2009-216 to provide that existing dischargers must limit their total nitrogen discharge in accordance with the Wastewater Discharge Rule by 2016, unless the discharger has received an authorization pursuant to G.S. 143-215.1 for construction, installation, or alteration of the treatment works for purposes of complying with the allocation under Wastewater Discharge Rule by December 31, 2016, at which point the compliance date must be no later than calendar year 2018.
- Authorizes the Commission for Public Health to adopt rules to incorporate the federal food code and authorizes the Department of Health and Human Services to grant variances from food and lodging rules, if DHHS determines that the variance will not result in a health hazard or nuisance condition.
- Establishes a process for the issuance of variances from the setback requirements for public water supply wells under certain circumstances.
- Provides that where application of the riparian buffer requirements of the Neuse River Basin Riparian Buffer Rule or the Tar Pamlico River Basin Riparian Buffer Rule to a lot of two acres or less that was platted and recorded prior to August 1, 2000, would preclude construction of a single-family residence and necessary infrastructure, the single-family residence may encroach on the buffer if certain conditions are met. The act directs DENR to study the application and implementation of these rules, including whether the grandfathering provision established by the section should be broadened.
- Provides that a ginseng export certificate may be obtained free of charge. Previously, an export certification fee of $3.00 per pound was required for each shipment.
- Changes the sunset for the Methane Capture Pilot Program from September 1, 2017, to September 1, 2011.
- Directs DENR to study stormwater management requirements for airports and consider whether the requirements might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the cost and other regulatory burdens of compliance.
- Directs DENR to transfer certain grant funds for the control of nonpoint source pollution to the Division of Forest Resources (DFR) and the Division of Soil and Water Conservation (DSWC), and requires the Division of Water Quality to establish a Workgroup of Nonpoint Source Agencies, including DFR and DSWC, to consider the competitive grant project proposals. The workgroup must be given full input to project funding decisions.
- Makes changes to financial assurance requirements for permit applicants and permit holders for hazardous waste facilities. In particular, the act: (1) adds a requirement for financial assurance sufficient to cover subsequent costs incurred by DENR in response to an incident at a facility; (2) eliminates a specific requirement for financial assurance to cover costs of off-site screening for potential migration of contaminants in the event of a release of hazardous waste or hazardous waste constituents into the environment; (3) eliminates a prohibition on use of financial tests or captive insurance as mechanisms to satisfy financial assurance requirements; (4) eliminates a requirement that an applicant provide cost estimates for facility closure, post-closure maintenance and monitoring, and any corrective action DENR may require, as well as estimates for off-site screening for potential migration of contaminants in the event of a release of hazardous waste or hazardous waste constituents into the environment; (5) with regard to requirements for accessibility of

financial assurance funds, provides that compliance with applicable federal requirements is sufficient to meet the requirements under State law; and (6) requires the EMC to adopt rules regarding financial responsibility to implement these financial assurance provisions, which may not exceed or be more stringent than requirements for financial assurance provided by federal regulation or law.

Except as otherwise specified, this act became effective July 1, 2011. (JLM)

Regulatory Reform Act of 2011

S.L. 2011-398 (SB 781). See **State Government**.

Solid/Hazardous Waste

Requirements for Mineral Oil Spills

S.L. 2011-38 (HB 103) amends laws governing discharges of oil and hazardous substances, to establish different requirements for discharges of mineral oil from electrical equipment owned by a public utility. As defined under the act, "mineral oil" means a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility.

With regard to cleanup of discharges of mineral oil of this type, a person having control over the discharge must:

- Report the discharge to the applicable regional office of the Department of Environment and Natural Resources (DENR) within 24 hours of confirmation of a discharge when the discharge (1) exceeds 25 gallons, (2) is directly to surface waters or causes a sheen on surface waters of the State, or (3) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls (PCBs). The notification must include the time of discovery, address or location of the release, immediate actions taken, estimated amount of the release, and, if known, the concentration of PCBs present in the discharge.
- Restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge.
- Where soil removal is necessary as part of a cleanup, remove all visible traces of the mineral oil. For discharges of mineral oil containing 50 parts per million or more of PCBs, cleanup must be performed in compliance with applicable provisions of the federal Toxic Substances Control Act. If it is not feasible to collect and remove the discharge within 24 hours of confirmation of the release, the person responsible must take all practicable actions to contain, treat, and disperse the discharge, except that no chemical or other dispersants or treatment materials detrimental to the environment or natural resources may be used for such purposes unless previously approved by the Environmental Management Commission.
- Notify DENR when the restoration has been properly completed for a discharge that (1) exceeds 25 gallons, (2) is directly to surface waters or causes a sheen on surface waters of the State, or (3) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of PCBs.

This act became effective April 12, 2011. (JLM)

Accelerate Cleanup of Industrial Properties

S.L. 2011-186 (HB 45) authorizes the risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, welfare, and the environment based on the current and anticipated future use of a site.

Applicability. – Risk-based cleanup is available for contaminated industrial sites governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control, and where the release of contamination was reported to the Department of Environment and Natural Resources (DENR) prior to March 1, 2011. Risk-based cleanup is not available for contaminated industrial sites governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific Remediation Standards. – Site-specific remediation or cleanup standards will be developed for contaminated industrial sites to eliminate or reduce to protective levels any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site. The standards will be developed in accordance with a number of specific requirements for the protection of air quality, surface water and groundwater quality, and human health.

Remedial Investigation Report and Remedial Action Plan. – A person who proposes a risk-based cleanup must prepare and submit to DENR a remedial investigation report providing detailed information on the site, contamination at the site, risks posed by the contamination, adjacent properties, and any other information required by DENR. The person must prepare and submit to DENR a proposed remedial action plan that provides for how the site would be cleaned up in order to protect public health, safety, welfare, and the environment, with proof of financial assurance that sufficient funds are available to carry out the cleanup.

Notice of Intent to Remediate. – A person proposing a risk-based cleanup must send a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners. The notice must include all of the information contained in the remedial investigation report. The person also must submit to DENR a certification that the notice of intent was properly distributed, information and comments received in response to the notice, and a description of how the remedial action plan was modified in response to the comments.

Review and Approval of Proposed Remedial Action Plans. – DENR must review each proposed remedial action plan and make a number of determinations prior to approving a plan, including whether the site-specific cleanup standards are appropriate for the site, that no unauthorized levels of contaminants will migrate from the site to adjacent properties, and that the plan is protective of public health, safety, welfare, and the environment. In its review and consideration of the proposed plan, DENR must consider information provided by the person who proposes the plan, as well as information provided by the local governments and adjoining landowners.

Attainment of the Remediation Standard. – When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may require additional cleanup only under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

Fees. – The fee for participation in a risk-based cleanup is $4,500 for each acre or portion of an acre of contamination, with a cap of $125,000 regardless of the size of the site. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

Construction of the act. – The act may not be construed or implemented to jeopardize federal authorization under any of the federal statutes, programs, or requirements for the

cleanup of contamination; limit the authority of DENR to require investigation, response, or cleanup of environmental contamination necessary to address an imminent threat to public health, safety, welfare, or the environment; or to affect or prevent the enforcement of any local government land-use or development regulation or ordinance.

Dry-cleaning Site Compliance with Land-use Restrictions. – The act provides that if a person responsible for a property subject to land-use restrictions under the Dry-Cleaning Solvent Cleanup Act fails to submit an annual certification that the land-use restrictions are properly recorded and followed, the Environmental Management Commission must issue a notice of such failure. The notice must inform the person of the actions needed to come into compliance and give the person at least 30 calendar days within which to come into compliance. A person who fails to come into compliance within the 30 day period will be subject to enforcement procedures.

Study of Costs Associated with Inactive Hazardous Substance or Waste Disposal Sites. – The act directs the Environmental Review Commission (ERC), with the assistance of DENR, to study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially-viable responsible party. The ERC will report its findings and recommendations, including any legislative proposals, to the 2012 General Assembly upon its convening.

This act became effective June 20, 2011. (JH)

Amend Solid Waste Financial Assurance Requirements

S.L. 2011-262 (HB 209) amends certain financial assurance requirements applicable to owners and operators of sanitary landfills to: (1) authorize the use of a corporate financial test or any other financial device allowed under federal law as a permissible mechanism to establish the financial assurance necessary for closure, post-closure maintenance and monitoring, and any corrective action that may be required at the facility; (2) decrease, from $3 million to $2 million, the minimum amount of financial assurance that must be established to cover costs for potential assessment and corrective action at a facility; and (3) authorize the use of a trust fund pay-in period as an allowable mechanism to establish the financial assurance necessary for potential assessment and corrective action at a facility permitted on or before August 1, 2009.

This act became effective June 23, 2011. (JLM)

Parks and Public Spaces

Conservation Easements Stewardship Funds

S.L. 2011-209 (SB 309) allows soil and water conservation districts to establish a special revenue fund for the maintenance of conservation easements. Funding sources can include grant money, donations, direct appropriations from the State or any of its agencies, or any other unrestricted funds appropriated to a soil and water conservation district from any source.

This act became effective July 1, 2011. (MM)

Ecosystem Enhancement Program Changes

S.L. 2011-343 (SB 425) provides that the preference for private mitigation that applies to certain applicants for compensatory wetlands mitigation now applies to local governments. This provision, however, does not apply to a local government that was a party to a mitigation banking instrument executed on or before July 1, 2011.

The act also establishes a new process by which the Ecosystem Enhancement Program will provide for compensatory mitigation. This new process creates a priority system for different types of programs for the procurement of compensatory mitigation.

This act became effective June 27, 2011, and applies to all projects and contracts awarded on or after that date. (JH)

Zoning and Development

Permit Terminal Groins

S.L. 2011-387 (SB 110) authorizes the Coastal Resources Commission (CRC) to permit terminal groins. The act defines "terminal groin" to mean a structure constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

The act provides as follows:

Terminal Groin Permit Application. – An applicant for a permit to construct a terminal groin must supply information supporting the application to the CRC, including:

- Information to demonstrate that structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.
- An environmental impact statement.
- A plan for the construction and maintenance of the terminal groin and accompanying beach fill project.
- A plan for the management of the inlet and estuarine and ocean shorelines immediately adjacent to the inlet.
- Proof of financial assurance adequate to cover the cost of: long-term maintenance and monitoring of the groin; implementation of mitigation measures; modification or removal of the terminal groin; and restoration of public, private, or public trust property if the groin has an adverse impact on the environment or property.

Terminal Groin Permit Issuance. – To issue a permit for the construction of a terminal groin, the CRC must make a number of findings, including:

- The applicant has demonstrated that structures are imminently threatened by erosion and that nonstructural approaches to erosion control are impractical.
- The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.
- Construction and maintenance of the terminal groin will not result in significant adverse impacts to public or private property.
- The inlet management plan is adequate for monitoring impacts and mitigating any adverse impacts.

Limitations on Number and Funding. – The CRC may issue no more than four terminal groin permits, and no permit may be issued where funds are generated from any of the following financing mechanisms:

- Special obligation bonds issued pursuant to Chapter 159I of the General Statutes.
- Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).
- Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.

No State funds may be spent for any activities related to a terminal groin and its accompanying beach fill project permitted pursuant to the act, unless the General Assembly enacts legislation appropriating funds explicitly for such purpose. This prohibition does not apply to any beach fill or beach nourishment project initiated prior to the effective date of this act.

This act became effective June 28, 2011. (JH) (JM)

Water Quality/Quantity/Groundwater

Prohibit Boylston Creek Reclassification

S.L. 2011-24 (HB 62) prohibits the Environmental Management Commission's (EMC) Boylston Creek Reclassification Rule from becoming effective. The Boylston Creek Reclassification Rule would have reclassified Boylston Creek from a Class C water to a Class C Trout water. Class C Trout waters are protected for the same uses as Class C water bodies, with additional protections for natural trout propagation and the survival of stocked trout, such as additional buffer requirements.

This act became effective July 1, 2011. (JH)

Exempt Small Agricultural Processing from Permit Requirements

S.L. 2011-41 (HB 162) provides that wastewater management systems for the treatment and disposal of wastewater from agricultural processing activities are not required to be permitted if all of the following conditions are met:

- The activities are carried out by the owner of the agricultural products, and produce no more than 1,000 gallons per day.
- Wastewater is not generated from an animal waste management system.
- Wastewater is disposed of by land application.
- No wastewater is discharged to surface waters.
- Disposal of the wastewater does not result in violation of surface or groundwater standards.

This act became effective April 19, 2011. (MM)

Reclaimed Water Rules/Storm Debris Cleanup

S.L. 2011-48 (HB 268) provides for alternative implementation of reclaimed water rules adopted by the Environmental Management Commission (EMC) and approved by the Rules Review Commission (RRC). The RRC received a sufficient number of letters of objection to two of the reclaimed water rules, subjecting the two rules to review by the General Assembly during the 2011 Regular Session.

The act provides for alternative implementation of the Permitting by Regulation Rule (15A NCAC 02U .0113), specifying that permitting by regulation for irrigation of agricultural crops that are supplied with reclaimed water includes irrigation of ornamental crops by field nurseries and above ground container nurseries.

The act provides for alternative implementation of the Reclaimed Water Utilization Rule (15A NCAC 02U .0501), specifying that existing or proposed artificial lakes or ponds operated by customers of reclaimed water providers may be used for storage and irrigation of reclaimed water with limited requirements for setbacks and liners.

The act also provides that if a National Pollutant Discharge Elimination System (NPDES) permit is required for storage or irrigation of reclaimed water, the Division of Water Quality in the Department of Environment and Natural Resources must issue general permits for such activities to encourage the use of reclaimed water and to minimize the regulatory burden on users of reclaimed water.

Storm Debris Cleanup. – On April 16, 2011, a series of tornadoes caused extensive property damage throughout central and eastern North Carolina. The act allowed the disposal, temporary storage, and burning of storm-related debris from April 16, 2011, through June 1, 2011, notwithstanding any permitting requirements for the handling or disposal of solid waste, or

any prohibitions on open burning related to the protection of air quality provided under State law. The act did not (1) allow the improper or unpermitted storage, disposal, or burning of hazardous waste; (2) obviate the need for a burning permit for the protection of the public from the hazards of forest fires; (3) allow any activity that would violate federal law; or (4) allow any activity causing an imminent threat to public health or safety.

This act became effective April 20, 2011. (JH) (JM)

Extend Pilot Program for Annual Inspections of Certain Animal Operations

S.L. 2011-145, Sec. 13.21 (HB 200, Sec. 13.21), as amended by S.L. 2011-391, Sec. 29 (HB 22, Sec. 29), extends the pilot program for the annual inspections of animal waste management systems to June 30, 2013. The Department of Environment and Natural Resources developed and implemented the pilot program pursuant to a 1997 State law.

This section became effective July 1, 2011. (MM)

End Division of Soil and Water Conservation Role Regarding Animal Waste Management Systems

S.L. 2011-145, Sec. 13.22 (HB 200, Sec. 13.22), as amended by S.L. 2011-391, Sec. 30 (HB 22, Sec. 30), provides that the Division of Water Quality of the Department of Environment and Natural Resources will provide inspections and enforcement to animal waste management systems. An animal operation may request an operations review by the Division of Soil and Water Conservation.

This section became effective July 1, 2011. (MM)

Agricultural Water Resources Assistance Program/ Conforming Changes; Funds to Promote Water Supply Development

S.L. 2011-145, Sec. 13.23 (HB 200, Sec. 13.23), as amended by S.L. 2011-391, Sec. 31 (HB 22, Sec. 31), establishes the Agricultural Water Resources Assistance Program (Program). The purpose of the Program is to assist farmers and landowners in the following:

- Identifying opportunities to increase water use efficiency, availability, and storage.
- Implementing best management practices to conserve and protect water resources.
- Increasing water use efficiency.
- Increasing water storage and availability for agricultural purposes.

The Program will be implemented by the Soil and Water Conservation Commission (SWCC) through the Soil and Water Conservation Districts in the same manner as the Agriculture Cost Share Program for Nonpoint Source Pollution Control. At least once each calendar year, the Director of the Division of Soil and Water Conservation (DSWC) of the Department of Agriculture and Consumer Services and the Commissioner of Agriculture must meet with stakeholders for the purpose of advising the SWCC on the development and administration of the Program, including the development of annual goals for the Program.

The DSWC must prepare, and submit to the Environmental Review Commission, a comprehensive annual report on implementation of the program. The first report must be submitted no later than January 31, 2013.

This section became effective July 1, 2011. (MM)

Reclaimed Water Cross-Connection Control

S.L. 2011-218 (HB 388) allows the use of direct cross-connections between reclaimed water and potable water systems when such direct cross-connections have been previously approved by the Department of Environment and Natural Resources.

This act became effective June 23, 2011. (JH)

Stormwater/Isolated Population Growth in County

S.L. 2011-220 (HB 492) provides that a county that contains an urbanized area and that has an actual population growth rate exceeding the State population growth rate is not subject to post-construction stormwater management for development in unincorporated areas of the county, when the population growth occurred in an area of the county containing less than 5% of the county's land area.

The act makes certain declarations concerning S.L. 2006-246, which provides for the implementation of the federal Phase II stormwater management requirements, and specifically requires compliance with post-construction stormwater management in a county that contains an urbanized area under the 1990 or 2000 census, and that has an actual population growth rate that exceeded the State population growth rate for the period from 1994 through 2004. This act provides that any rules adopted to implement S.L. 2006-246 are to be consistent with the provisions of this act, and any designations of counties that would not have occurred under S.L. 2006-246, as amended by this act, are rescinded. Future designation of counties as Phase II counties by the Environmental Management Commission under S.L. 2006-246 is not precluded.

This act became effective June 23, 2011, and applies to any development that occurs on or after that date. (JH)

Clarify Water and Well Rights/Private Property

S.L. 2011-255 (SB 676) amends provisions of the Well Construction Act governing the permitting, inspection, and testing of private wells to: (1) provide that no person can unduly delay or refuse to permit a well that is constructed, repaired, and operated in compliance with requirements of the Well Construction Act and the associated rules; and (2) prohibit denial of a permit on the basis of a local government policy discouraging or prohibiting the drilling of new wells.

The act makes private wells subject to a provision of the Well Construction Act governing the use of a "water supply well" removed from service as a potable water supply source. Such wells may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use. Under the Well Construction Act, the term "water supply well" otherwise specifically excludes wells constructed by an individual on land which is owned or leased by the individual, appurtenant to a single-family dwelling, and intended for domestic use.

This act became effective June 23, 2011. (JLM)

Associations-Stormwater Responsibility/Sanitary District and Septage Rules

S.L. 2011-256 (HB 750) requires the Department of Environment and Natural Resources to transfer a permit for a stormwater management system from a declarant of a condominium or planned community to an owners' association upon request of the permittee and submission of documentation that declarant control has terminated. In addition, the act:

- Provides that the rules of a sanitary district may not be more restrictive than or conflict with the requirements or ordinances of a county with jurisdiction over the area.
- Prohibits any person from contracting or subcontracting to rent or lease to another a portable toilet or to manage or dispose of waste from a portable toilet, unless that person is permitted to operate a septage management firm.

This act became effective June 23, 2011. (JLM)

Functionally Equivalent Wastewater Systems

S.L. 2011-261 (HB 594) authorizes the Commission for Public Health to approve as an innovative wastewater system any wastewater trench system that is determined by the Commission to be functionally equivalent to an accepted wastewater trench system.

This act became effective June 23, 2011. (JH)

Exempt Central Coastal Plain Capacity Use Area from Interbasin Transfer Requirements

S.L. 2011-298 (HB 643) exempts interbasin transfers (IBTs) to supplement groundwater supplies in the Central Coastal Plain Capacity Use Area (CCPCUA) from all interbasin transfer certification requirements. The exemption will expire if the cumulative volume of such transfers exceeds eight million gallons per day. The CCPCUA was established by the Environmental Management Commission to address overuse of the area's aquifers and declining aquifer recharge rates and encompasses Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne, and Wilson Counties.

This act became effective June 24, 2011, and applies to any interbasin transfer to supplement groundwater in the CCPCUA initiated on or after August 31, 2007. (JH)

Promote Water Supply Development/Efficiency

S.L. 2011-374 (HB 609) promotes the development of water supply reservoirs and other water supply resources by:

- Directing the Department of Environment and Natural Resources (DENR) to cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs.
- Directing DENR to be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies in the planning and development of water supply sources and water storage projects for the State.
- Authorizing DENR to assist the local government in identifying the preferred water supply alternative that will provide for the long-term water supply needs of the local government.
- Authorizing water systems to establish regional water supply planning organizations to plan for and coordinate water resource supply and demand.

The act expands the purposes for which Clean Water Management Trust Fund revenues may be used, including the acquisition of interests in property in order to protect, conserve, enhance, or develop drinking water supplies.

The act improves the efficiency of use of North Carolina's water resources by:

- Requiring that local water supply plans include a plan for the reduction of long-term per capita demand for potable water.

- Requiring a local government or large community water system to demonstrate that its required consumer education program includes information on measures for the reduction of water consumption, in order to be eligible for State water infrastructure funds to extend waterlines or expand water treatment capacity.
- Adding a local government's preparation of a required local water supply plan to the factors the Local Government Commission must consider when determining whether to approve bonds for water facilities.
- Directing DENR to provide outreach and assistance regarding water efficiency, including the development of best management practices for community water efficiency and conservation.

The water efficiency provisions of this act became effective October 1, 2011. All other sections of this act became effective June 27, 2011. (JH)

Studies

Referrals to Existing Commissions/Committees

Study of Costs Associated with Inactive Hazardous Substance or Waste Disposal Sites

S.L. 2011-186, Sec. 7 (HB 45, Sec. 7) directs the Environmental Review Commission (ERC), with the assistance of the Department of Environment and Natural Resources, to study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially viable responsible party. The ERC also must identify potential sources of funds to address the projected need for assessment and remediation. The ERC must report its findings and recommendations, including any legislative proposals, to the 2012 General Assembly upon its convening.

This section became effective June 20, 2011. (MM)

Review Water Supply Laws of the State

S.L. 2011-298, Sec. 3 (HB 643, Sec. 3) directs the Environmental Review Commission (ERC) to review the water supply laws of the State, including the interbasin transfer laws and laws governing the establishment and implementation of capacity use areas. The ERC must specifically consider whether the policies underlying the interbasin transfer and capacity use area laws are consistent. The ERC may make recommendations as to how the State might better coordinate its policies on interbasin transfers, capacity use areas, and other water supply laws. The ERC must report its findings and recommendations, if any, to the 2012 Regular Session of the 2011 General Assembly.

This section became effective June 24, 2011. (MM)

Referrals to Departments, Agencies, Etc.

Study Exempting Motor Vehicles from Emissions Inspections

S.L. 2011-145, Sec. 28.24 (HB 200, Sec. 28.24) requires the Division of Motor Vehicles (DMV) of the Department of Transportation (DOT) to lead a study to examine exempting (1) the three newest model year vehicles, and (2) all vehicles from the emissions inspection required for motor vehicles. As part of the study, the Department of Environment and Natural Resources

(DENR), Division of Air Quality (DAQ), in coordination with DMV, must evaluate the potential impacts of exempting these motor vehicles on emissions levels and air quality.

No later than March 1, 2012, DOT and DENR must submit a joint report of the results of the study to the Joint Legislative Transportation Oversight Committee, the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the House Appropriations Subcommittee on Transportation, and the Senate Committee on Appropriations Subcommittee on Department of Transportation.

This section became effective July 1, 2011. (MM)

Development and Publication of the Interim Agronomic Rates

S.L. 2011-198, Sec. 1(d) (SB 378, Sec. 1(d)) directs the Interagency Group formed to work on issues related to animal waste management to submit an interim report no later than July 1, 2011, and a final report no later than December 1, 2014, on the development and publication of the interim agronomic rates for animal waste applications on certain energy crops. The Interagency Group was established by the General Assembly in 1995, and consists of two representatives from each of the following State agencies: the Division of Soil and Water Conservation, Department of Environment and Natural Resources, Department of Health and Human Services, the Department of Agriculture and Consumer Services, and the Cooperative Extension Service to the Environmental Review Commission, the Commissioner of Agriculture, and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee. See **Agriculture**.

This section became effective June 23, 2011. (JM) (MM)

Oil and Gas Exploration Study

S.L. 2011-276, Sec. 4 (HB 242, Sec. 4) requires the Department of Environment and Natural Resources, the Department of Commerce, and the Consumer Protection Division of the Department of Justice to study various issues related to oil and gas exploration in this State and the use of directional and horizontal drilling and hydraulic fracturing for that purpose. The agencies must report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. See **Energy**.

This section became effective June 23, 2011. (JLM)

Vetoed Legislation

Water Supply Lines/Water Violation Waivers

HB 482. See **Vetoed Legislation.**

Chapter 12
Finance

Cindy Avrette (CA), Judy Collier (JC), Dan Ettefagh (DE), Heather Fennell (HF),
Trina Griffin (TG), Greg Roney (GR)
For a more detailed explanation, see the ***2011 Finance Law Changes*** publication.

Enacted Legislation

Technical Changes: Eligibility: Industrial Facilities/Fix Uwharrie Commission

S.L. 2011-3 (SB 76) reenacts and amends the sales tax refunds for industrial facilities, provides for interest on overpayments of property tax, and delays the collection of property tax pending appeal. The remainder of this act does not affect North Carolina tax laws and is not discussed below.

Sales Tax Refund for Industrial Facilities. – The act reenacts the sales tax refunds for paper-from-pulp manufacturing and turbine manufacturing enacted in S.L. 2010-91. It also makes the following changes to the refunds for industrial facilities:

- Amends the definition of "owner" to include lessees under a capital lease.
- Deletes the defined term "strategic partner." This term was used only in the refund for computer manufacturing facility, which has been repealed.
- Removes additional reference to computer manufacturing facilities.
- Clarifies the minimum investment requirement for the refunds can be met by funds invested directly or indirectly through a related entity.

Property Tax Overpayments and Appeals. – The act provides interest on overpayments and suspension of the enforcement proceedings for property valuations appealed to county boards of equalization and review. If the county board of equalization and review reduces the value of the property, or removes the property from taxation, the taxpayer receives interest on any overpayment of taxes. The interest for overpayments is the same as the interest charged for delinquent taxes. The tax collector may not enforce collection of the taxes while the appeal to the board is pending, but interest will accrue if the tax is not timely paid.

The section related to the sales tax refunds for industrial facilities is effective July 1, 2010, and applies to sales on or after that date. The section relating to interest on overpayments of property tax is effective for taxable years beginning on or after January 1, 2011. (TG)

Clarify Refunds of Tax Overpayments

S.L. 2011-4 (SB 97) clarifies when the discovery of an overpayment occurs, triggering the Department of Revenue's (Department) obligation to issue a refund. Under the act, discovery occurs in any of the following circumstances:

- When the automated processing of a return indicates the return requires further review.
- When a review of a return by an employee indicates an overpayment.
- When an audit of a taxpayer by an employee indicates an overpayment.

If the Department's computer system flags a return for further review, the Department must verify that an overpayment exists before issuing a refund, because the automated flagging does not always indicate the precise nature of an error on a return. However, this act clarifies that the verification need not occur within the statute of limitations period. The flagging of the

return is sufficient to put the Department on notice that a refund may be due for purposes of satisfying the statute of limitations.

The act also directs the Department to issue refunds of overpayments discovered within the statute of limitations in a manner consistent with the clarification set out by the act. After passage of this act, the refunds were issued in April of 2011 with 5% interest.

This act became effective March 9, 2011. (TG)

Internal Revenue Code Update

S.L. 2011-5 (HB 124), as amended by S.L. 2011-330 (SB 267), updates the reference to the Internal Revenue Code (Code) used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. The act incorporates many, but not all, of the tax provisions contained in the federal Small Business Jobs Act of 2010 and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 as follows:

- Conforms to the Code by extending for an additional two years various individual and business tax deductions that expired in 2010, such as the tax deduction for higher education expenses and the $250 tax deduction for teacher's classroom supplies.
- Decouples from the bonus depreciation provision but maintains the same basis in the property for federal and State tax purposes, by requiring an 85% add back of any accelerated depreciation a taxpayer claimed on the federal return for taxable years 2010 through 2012 and a corresponding deduction of 20% of this amount over the next five tax years.
- Conforms to some of the section 179 changes and decouples from others. It maintains the current section 179 expense deduction limit and cap through 2011 and conforms to the federal section 179 expense deduction limit and cap for 2012. It conforms to the expanded definition of qualifying property for taxable years 2010 and 2011. It decouples from the additional section 179 expense deduction by requiring an 85% add back of the additional expensing taken under federal law and providing a corresponding deduction of 20% of this amount over the next five tax years.

This act became effective on March 17, 2011. Several of the tax provisions contained in the federal acts became effective retroactively. Article I, Section 16 of the North Carolina Constitution prevents North Carolina from enacting a law that retroactively increases a person's tax liability. Therefore, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year or impose an estate tax on the estate of a decedent dying in calendar year 2010 became effective for taxable years beginning on or after January 1, 2011. (CA)

Business Entity Changes

S.L. 2011-9 (HB 123) makes changes to the business entity ownership requirements for qualification of land at its present-use value for property tax purposes, so the requirements are met when the current owner of the land shares members in common with the prior owner of the land. Since 1973, farmland has been appraised and assessed for property tax purposes at its present-use value (PUV), as opposed to fair market value, if the farmland meets certain ownership, size, and use requirements. Farmland owned by a business entity meets the ownership requirements if the land was owned by the business entity or one of its members for the four years immediately preceding January 1 of the year for which the benefit is claimed.

This act allows the business entity ownership requirements to be satisfied when the business entity that currently owns the farmland shares one or more members in common with the business entity that previously owned the farmland. The act was a recommendation of the Revenue Laws Study Committee, which examined this issue after several counties denied PUV

status to farmland owned based upon the language in G.S. 105-277.3(b1). This act became effective for taxable years beginning on or after July 1, 2011. Applications filed beyond the listing period (January 1-January 31) were accepted up to and through September 1, 2011, so that an owner may benefit from the property tax relief during the July 1, 2011 tax year. (TG)

Reform Unemployment Insurance Tax Structure/Expedite Analysis

S.L. 2011-10 (SB 99) directs the Department of Commerce (Department) to contract with a consultant to conduct a thorough analysis of the State's Unemployment Insurance tax structure, and exempts the Department from statutory purchase and contract requirements as they relate to that contract. The Department must provide periodic updates on the progress of the analysis and report to the General Assembly any findings and recommendations based on the consultant's analysis. The report must be made within 45 days after the analysis is complete, and must include recommendations on any tax structure changes and financial options that address the servicing of the State's debt incurred to pay unemployment insurance benefits.

The act authorizes the Department to seek and accept non-State funds, grants, and in-kind contributions to pay for the analysis. The Department also may use funds available within the Employment Security Commission, including any State and federal funds that may be used for this purpose.

This act became effective March 25, 2011. (CA)

Repeal Land Transfer Tax

S.L. 2011-18 (HB 92) repeals authority granted to counties in 2007 to levy, upon approval of voters in the county, a tax on the sale of real property at the rate of up to 0.4% of the value of the property. Prior to repeal as provided in this act, no county achieved voter approval to levy this local land transfer tax, although the following 21 counties have conducted public referendums: Ashe; Avery; Brunswick; Chatham; Clay; Davie; Gates; Graham; Harnett; Henderson; Hoke; Johnston; Macon; Moore; Orange; Pender; Polk; Rutherford; Swain; Tyrrell; and Union.

The General Assembly has given the following four counties the authority to levy a land transfer tax on instruments conveying an interest in real property without a referendum: Dare; Currituck; Chowan; and Camden. The General Assembly has authorized the following three counties to levy, upon approval of the voters, a land transfer tax: Pasquotank; Perquimans; and Washington. The act does not affect these local authorizations.

This act became effective March 31, 2011. (TG)

Tax of Improved Property in Roadway Corridors

S.L. 2011-30 (SB 107) classifies improved property inside a roadway corridor as a special class of property, and provides the property will be taxable at 50% of its appraised value. In 1987, the General Assembly classified *unimproved* property in a transportation corridor marked on an official map as a special class of property and provided that it would be taxable at 20% of its appraised value. The act creates a similar classification for *improved* property and will reduce local property tax revenues in counties where such property exists.

This act became effective for taxes imposed for taxable years beginning on or after July 1, 2011, and sunsets for taxes imposed for taxable years beginning on or after July 1, 2021. (CA)

Prepaid Wireless/Point of Sale Collection

S.L. 2011-122 (HB 571) provides for the collection of the 911 service charge on prepaid wireless service at the point of retail sale. The 911 service charge for prepaid wireless is the same as the monthly charge for 911 service imposed on all other phone subscribers. The Department of Revenue will collect the 911 service charge from the retailers and remit the charges collected to the 911 Board.

This act repeals the prior method of collection. This act, and the new method of collecting the 911 service charge at the point of sale by the retailer, becomes effective July 1, 2013. (HF)

Modify Property Tax Base Exclusions

S.L. 2011-123 (HB 206) excludes from property tax a contiguous tract of commercial property significantly damaged by fire or explosion and donated to a nonprofit corporation. This legislation addresses an issue specific to the Town of Garner. The ConAgra plant in Garner was damaged significantly as a result of a fire or explosion in June 2009. ConAgra donated the property to the Garner Economic Development Corporation to maintain, develop, and market for economic development.

This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxable years beginning on or after July 1, 2016. (CA)

Appropriations Act of 2011

S.L. 2011-145 (HB 200), as amended by S.L. 2011-330 (SB 267), known as the Current Operations and Capital Improvements Appropriations of 2011, contains a $19.7 billion budget for fiscal year 2011-12 and a $19.9 billion budget for fiscal year 2012-13. The act also contains a finance package that allows a $50,000 personal income tax deduction for net business income, changes the starting point for calculating North Carolina taxable income from federal taxable income to federal adjusted gross income, and exempts from the franchise tax base reserves for amortization of intangible assets. The act reduces budget availability by $131.6 million in fiscal year 2011-12 and by $335.6 million in fiscal year 2012-13, for a total finance package of $467.2 million for the biennium. This tax relief is in addition to the $1.3 billion in expiring tax revenue. The act generates State and county revenues of $100.9 million in fiscal year 2011-12 and $101.4 million in fiscal year 2012-13 by increasing various fees.

Use Adjusted Gross Income as Starting Point for Calculation of State Income Tax and Provide Tax Relief for Small Businesses. – Section 31A.1 adds a new deduction for "net business income" when calculating North Carolina taxable income for personal taxes. The deduction allows an individual taxpayer to exclude the first $50,000 of net business income received during the taxable year. To qualify, the income must be subject to personal tax and be business income from an activity where the taxpayer actively participates. Business income is defined to exclude income deemed passive under the federal tax rules. This change becomes effective for taxable years beginning on or after January 1, 2012.

Section 31A.1 also changes the starting point for calculating North Carolina taxable income from federal taxable income to federal adjusted gross income (AGI). This change did not change the tax base or increase North Carolina tax in any way. All current deductions and credits remain. The change simplifies the calculation of North Carolina taxable income, because North Carolina taxpayers no longer have to make adjustments to reduce the federal standard deduction and federal exemption amounts to determine the applicable State deduction and exemption amounts. This change becomes effective for taxable years beginning on or after January 1, 2012.

Franchise Tax Base Modification. – Section 31A.2 provides an exemption of reserves for amortization of intangible assets from surplus and undivided profits, thus excluding them from

the franchise tax capital base. Examples of intangible assets include goodwill, patents, copyrights, franchises, trademarks and trade names, as well as going concern value. Some taxpayers deducted reserves for amortization of intangible assets prior to the law change, because it is an allowable deduction under Generally Accepted Accounting Principles. The Department of Revenue disallowed the deduction and collected additional tax on taxpayers that elected to participate in the Department's Resolution Initiative. This change became effective retroactively for tax years beginning on or after January 1, 2007. (CA)

Facilitate Electronic Listing

S.L. 2011-238 (HB 896) repeals an existing statutory authority that allowed counties to provide for electronic listing of personal property and creates a new statute that allows counties to provide for electronic listing of personal property only after the Department of Revenue has established standards and minimum requirements, in consultation with the counties. Once the standards have been established a county may, by resolution, provide for electronic listing. A county may delegate this authority to the county tax assessor. The act also makes other procedural changes related to electronic listing.

This act became effective June 23, 2011. (TG)

Property Tax Uniformity for Conservation Land

S.L. 2011-274 (HB 350) clarifies and modifies the tax exemption for real property for educational and scientific purposes as a protected natural area, by listing certain enumerated conservation purposes. The act:

- Creates a five-year rollback for avoided taxes if conservation property is no longer used for conservation purposes, is used to generate income inconsistent with conservation, or is sold or transferred without an easement requiring perpetual use of the listed conservation purposes and without a prohibition on income generation.
- Expressly aligns definitions for educational and scientific purposes with the property tax exemption for property used for educational and scientific purposes.
- Requires the entity owning the property to be "organized to receive and administer lands for conservation purposes." This change mirrors the existing law as it relates to the income tax credit for real property donations for conservation purposes.
- Adds the requirement that property qualifying under this exemption either not earn income or earn only income that is merely incidental to, and not inconsistent with, conservation purposes.

This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011. (DE)

Sales and Use Tax Overcollection

S.L. 2011-293 (HB 93) allows a seller to apply overcollected sales tax to offset a use tax liability on a related transaction. Specifically, the act allows the Secretary of Revenue to take one of the following three actions when he or she determines that a seller has overcollected sales tax on a transaction:

- Allow a refund of the tax if the seller gives the purchaser credit for, or a refund of, the overcollected tax. However, no refund is given if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax.
- If the seller is liable for use tax on a related transaction, allow the seller to offset the use tax liability with the overcollected sales tax. However, no offset is permitted if the seller elected to receive a refund of the overcollected sales tax. The fact that a

seller is allowed an offset does not affect the liability of the seller to the purchaser for the overcollected tax.

- If neither of the aforementioned applies, retain the total amount collected on the transaction.

The act became effective July 1, 2011, and applies to tax liabilities that accrue on or after that date. (TG)

Small Business Assistance Records/Tax Payments

S.L. 2011-297 (SB 385) exempts from the public records law certain documents related to business counseling or technical assistance provided by a State entity to an individual.

The act also allows the owner of a pass-through entity that claims a tax credit for going into business under Article 3J of Chapter 105 of the General Statutes to treat some or all of the credit as a tax payment made by, or on behalf of, the taxpayer. By treating the credit as a tax payment, the taxpayer is able to deduct from another state's tax calculation the taxpayer's tax paid to North Carolina, including any amount for which it received a credit. This change is effective for taxable years beginning on or after January 1, 2011.

Except as noted above, this act became effective June 24, 2011. (CA)

Various Economic Development Incentives

S.L. 2011-302 (HB 751) amends three tax incentives:

Preferential tax rate on mill machinery. – This act expands the 1%, $80 excise tax applicable to equipment used to manufacture products. Specifically, the act:

- Expands the rate to include specialized equipment used at a ports facility to unload or process bulk cargo to make it suitable for delivery to, and use by, manufacturing facilities.
- Expands the rate to include machinery used at a "large manufacturing and distribution facility" for assembling products and distributing finished products. A "large manufacturing and distribution facility" is defined as one for which an investment of private funds of at least $80 million is made within 5 years after the date on which the first property investment is made and one that will achieve an employment level of at least 550 within 5 years after the date the facility is placed into service. In addition to the preferential tax rate, the act also provides a State and local sales tax refund to a large manufacturing and distribution facility that purchases distribution equipment on or after July 1, 2012, and before July 1, 2013.

Port enhancement zones. – The act creates a new type of zone eligible for Article 3J enhanced credits offered by the State as an incentive for businesses to create jobs and invest in business property. A taxpayer's eligibility for a credit and the amount of the credit varies depending upon the county or zone in which the jobs are created or the investments are made. North Carolina has two State ports, the Port of Morehead City located in Carteret County, and the Port of Wilmington located in New Hanover County. Both Carteret and New Hanover are tier 3 counties.

Encourage Investment to Retain Article 3A Installment. – The act creates an exception for which a taxpayer may continue to take the remaining installments of the credit for substantial investment in other property, even when the number of employees the taxpayer employs at the property falls below the required 200 employees. The act provides that a taxpayer may continue to claim the remaining installments of the credit if both of the following conditions apply:

- The taxpayer has invested at least 2 times the value of the remaining installments of the credit in the property within 2 years of the date the employment fell below 200.

- The employment level has not fallen below 125. If the employment level falls below 125, the taxpayer may not take the remaining installments of the credit, regardless of how much the taxpayer has invested in the property.

The retention of the remaining installments of an Article 3A tax credit is effective retroactively for taxable years beginning on or after January 1, 2009. The expansion of the 1%, $80 excise tax and expansion of the tier one benefits to port enhancement zones become effective in 2013. (CA)

Revenue Laws Technical, Clarifying, and Administrative Changes

S.L. 2011-330 (SB 267) makes various technical, administrative, and clarifying changes to the revenue laws and related statutes as follows:

- **Business Tax Changes.** –
  - Changes the effective date for the exclusion of amenities from general admissions receipts.
  - Modifies the cigarette excise tax payment statute to accommodate operating procedural changes being implemented by certain cigarette manufacturers and their affiliates. It does not change the manufacturer that is responsible for paying the tax.
  - Repeals several obsolete provisions and removes references to repealed statutes.
  - Provides a definition for "development tier one area" in the tax credit for research and development. The tax credit amount for research performed in a development tier one area is 3.25%.
  - Clarifies the franchise tax base.
- **Personal Tax Changes.** –
  - Clarifies that the Internal Revenue Code update legislation applies to the estates of decedents dying on or after January 1, 2011.
  - Makes changes to the provisions in the 2011 Appropriations Act regarding the move from federal taxable income to adjusted gross income to ensure the act does not inadvertently change the existing tax base in ways that were not intended.
  - Ensures that a taxpayer may not take a double deduction for a 2009 net operating loss claimed on a 2006 return.
- **Sales and Use Tax and Manufacturing Fuel and Certain Machinery and Equipment Tax Changes.** –
  - Clarifies the original intent of the sales tax refund granted to professional motorsports teams for aviation fuel and tangible personal property that comprises part of the racing vehicle.
  - Clarifies that an accommodation arranged or provided by a school, camp, or similar entity to a person who pays to attend the school or camp is not subject to sales tax.
  - Removes the word "wireline" from the term "prepaid calling service" at the request of the Streamlined Sales Tax Compliance Review and Interpretations Committee. The act also makes similar changes in the definitional statute.
  - Clarifies that the sales tax exemption for prosthetic devices is for human use, corrects the name of the agency where the Child and Adult Care Food Program is located, and corrects the name of the federal supplemental food program. Also makes technical changes requested by the Department of Revenue.
  - Removes geothermal heat pumps from the Energy Star sales tax holiday, because consumers are not able to purchase them from a retailer.

- Corrects the sunset dates of the sales tax refunds for fuel sold to passenger air carriers and motorsports teams.
- Clarifies that use tax is payable by an individual on an annual basis for purchases made outside the State for a nonbusiness purpose of digital property and certain services.
- Clarifies that other than boats and aircraft, all tangible personal property, digital property, and taxable services purchased outside the State for a nonbusiness use are subject to the annual reporting requirement for use tax.
- Provides a facilitator is not liable for certain over collections or under collections of sales tax or local occupancy tax during the period of January 1, 2011, through April 1, 2011, as the result of new collection and remittance obligations, so long as the facilitator made a good faith effort to comply with the law and collect the proper amount of tax. Facilitators are entities that enter into a contract with the providers of accommodations to market and collect payment for accommodation rentals.
- Clarifies the effective date of requirements for a datacenter to qualify for the 1% excise tax on the machinery and equipment it purchases.
- Clarifies that the amount of credit allowed for tax paid to another state is the amount of tax due and paid to that state.
- Clarifies that a refund of tax allowed under certain statutes is not an overpayment of tax entitled to interest.
- Clarifies the effective date of a tax change for services.
- Changes the term "certificate of resale" to "certificate of exemption" to conform to the name on the certificate.
- Clarifies that for purposes of digital property, the sale is sourced to the place where the purchaser of the property takes possession or makes first use of the property, whichever comes first.

➢ **Excise Tax on Conveyances.** – Clarifies the refund process for the deed stamp tax.

➢ **General Administration Tax Changes.** –

- Updates the reference to the North American Industry Classification System (NAICS) and places the definition in the statute applicable to most of Chapter 105 of the General Statutes.
- Makes a conforming change to the term "information technology and services" to reflect the changes from the 2002 NAICS to the 2007 NAICS.
- Clarifies that the higher penalty for failure to obtain a license under the motor fuel statutes applies only after the taxpayer has received written notification from the Department of Revenue to obtain the requisite license.
- Reconciles two conflicting provisions concerning whether the identity of certain taxpayers is public information and makes conforming changes. The taxpayers affected are those who bring a contested case action at the Office of Administrative Hearings to obtain a review of an assessment or a denial of a refund by the Department of Revenue.
- Clarifies that a waiver of a statute of limitations must be executed before the statute of limitations expires.
- Repeals an obsolete reporting provision.
- Conforms the sunset provisions of miscellaneous provisions associated to the tax credit for recycling oyster shells. The General Assembly extended the sunset on this credit from January 1, 2011, to January 1, 2013, in S.L. 2010-147.
- The definition of "'person' for purposes of the Setoff Debt Collection Act" is the same as the definition of "person" for tax purposes.

- **Property Tax Changes.** –
  - Clarifies the postmark rule for property taxes on registered motor vehicles. The provision is the same as the rule for other property tax payments and is the same as current administrative practice.
  - Clarifies that the definition of "public service company" in the property tax statutes does not include providers of mobile telecommunication service.
  - Corrects errors in the effective date of legislation regarding the change in the collection of motor vehicle property taxes.
- **Local Government Sales and Use Tax Changes.** –
  - Modernizes the local sales tax base to conform to the State sales tax base for items taxed at the general rate of tax. This change will remove the need to amend the local sales tax statute whenever an item is added to the State sales tax base and taxed at the general rate of tax. It effectively includes digital products in the local sales tax base, as intended by the General Assembly.
- **Miscellaneous Changes.** –
  - Removes the sunset date of a provision that allows the Codifier of Statutes to renumber subdivisions in the special license plates statute in sequential and alphabetical order.
  - Clarifies the fees that should be credited to the Insurance Regulatory Fund.

Except as otherwise provided, this act became effective June 27, 2011. (CA)

Extend Sunsets

S.L. 2011-345 (SB 436) extends the sales tax refund allowed to a joint governmental agency created to operate a cable television system to purchases made through June 30, 2011. In 2010, the General Assembly allowed 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 only entity that fits this description is MI Connection.

Under G.S. 105-164.14(c), a city may obtain a sales tax refund of the purchases it makes. Under that authority, a city that operates a cable television system may obtain a sales tax refund; MI Connection was not allowed a refund under that subsection, because it was operated as a joint venture rather than by the cities themselves.

This act became effective June 27, 2011. (TG)

Increase in Rem Foreclosure Fee

S.L. 2011-352 (SB 537) increases the amount of the charge for administrative costs that may be added as part of the costs in an in rem foreclosure proceeding for delinquent tax due, raising the allowable amount from $50 to $250. The in rem procedure is an expedited procedure that permits a taxing unit to docket a judgment against the property in State court and proceed with a foreclosure sale within three months to two years after the judgment is docketed.

This act became effective July 1, 2011, and applies to in rem foreclosure proceedings commenced on or after that date. (CA)

Extend Time for Site of Low/Moderate Income Housing

S.L. 2011-368 (HB 417) extends from five years to ten years the maximum time period that real property owned by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation.

This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011. (GR)

Forced Combinations

S.L. 2011-390 (HB 619) changes the authority of the Secretary of Revenue to adjust the income of a multistate corporation by requiring it to file a combined return when the Secretary determines the corporation conducts its business in a way that fails to accurately reflect its income attributable to North Carolina. The Secretary may make this redetermination only if the Secretary finds the corporation fails to accurately report its State net income through the use of transactions that lack economic substance or are not at fair market value.

The act becomes effective January 1, 2012, and applies to proposed assessments for taxable years beginning on or after January 1, 2012. (CA)

Tax Credits for Children with Disabilities

S.L. 2011-395 (HB 344). See **Education.**

Studies

Referrals to Existing Commissions/Committees

Surplus Lines/Premium Tax-Agency Bill

S.L. 2011-120, Sec. 1.2 (SB 321, Sec. 1.2) directs the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the potential impact that would result from the State's entrance into a nonadmitted insurance multistate agreement or other compact or interstate agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act (Act) of 2010, in order to prevent the State from losing revenue after July 21, 2011, the effective date of the act.

The Committee must determine if entering into a compact or agreement would result in retention of surplus lines tax revenue for the State, and if so, which compact or agreement would result in the most retention of surplus lines tax revenue for the State and the most cost-efficient method of administering the collection and distribution of tax revenues. The Committee must report its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly.

This section became effective July 21, 2011. (JC)

Study Infractions and Waivable Offenses

S.L. 2011-145, Sec. 15.9 (HB 200, Sec. 15.9) authorizes the Revenue Laws Study Committee to study the penalties and fines for infractions and waivable offenses and determine whether current amounts are at a level appropriate for the associated offenses. The Committee must report its findings, together with any recommended legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening.

This section became effective July 1, 2011. (JC)

Register of Deeds/Fees

S.L. 2011-296, Sec. 5 (HB 384, Sec. 5) directs the Revenue Laws Study Committee to review the effect of the changes enacted by the act to determine whether they have simplified the collection and remittance of fees by the Register of Deeds for the filing of various instruments, and to study the effect the fees changes have had on revenue collections in the 100

counties. The Committee must report its findings to the North Carolina General Assembly and recommend whether the provisions enacted by the act should sunset on July 1, 2013, as set out in the act.

This section became effective October 1, 2011, and applies to instruments registered on or after that date. (JC)

Forced Combinations

S.L. 2011-390, Sec. 7 (HB 619, Sec. 7) authorizes the Revenue Laws Study Committee to review the law enacted by the act and to recommend whether any changes are needed, and whether the provisions of the act should apply to pending assessments. The Committee must report its findings to the 2012 Regular Session of the 2011 General Assembly.

This section became effective June 30, 2011. (JC)

Chapter 13
Health and Human Services

Susan Barham (SB), Amy Jo Johnson (AJ), Theresa Matula (TM),
Shawn Parker (SP), Janice Paul (JP)

Enacted Legislation

Hospital Medicaid Assessment - Payment Program

S.L. 2011-11 (SB 32) imposes two different Medicaid-related assessments on hospitals: an equity assessment and an upper pay limit assessment. The quarterly assessments are calculated annually as a percentage of total hospital costs by the Secretary of Health and Human Services. The proceeds of the assessments are used to make quarterly distributions to the hospitals, as well as quarterly transfers to the General Fund. The act directs the Department of Health and Human Services to file a State plan amendment with the Centers for Medicare and Medicaid Services to implement the hospital assessments and payments by March 31, 2011.

This act became effective March 25, 2011. (AJ)

Modify Federal Medical Assistance Percentage Cuts

S.L. 2011-23 (SB 58) modifies the federal medical assistance percentages cuts in the 2010-2011 State budget by eliminating a reduction in Medicaid provider rates and eliminating a reduction in retirement system contributions to backfill federal medical assistance percentages funds.

This act became effective March 31, 2011. (AJ)

Sex Offenders Can not Be Emergency Medical Services Personnel

S.L. 2011-37 (HB 59) provides that a person who is required by law to register as a sex offender, or who was convicted of a registerable offense, must not be granted Emergency Medical Service (EMS) credentials or have EMS credentials renewed.

This act became effective April 12, 2011. (JP)

Modify Public Swimming Pool Requirements

S.L. 2011-39 (SB 368). See **Environment**.

Medicaid Billing by Local Health Departments

S.L. 2011-90 (SB 245) authorizes local health departments, district health departments, and consolidated human service agencies to bill Medicaid through an approved clearinghouse or through the Health Information System (HIS). Entities are entitled to the same negotiated rates as other entities classified as public health entities, regardless of the billing method chosen. The Division of Public Health will provide aggregate data requirements for Medicaid cost study reimbursement on behalf of entities choosing to bill through an approved clearinghouse; however, the entities are required to submit aggregate data information to the Division of Public Health for this purpose.

This act became effective May 26, 2011. Local health departments, district health departments, and consolidated human services agencies may rebill outside the HIS system any unpaid Medicaid claims submitted to HIS between July 1, 2010, and May 26, 2011. (AJ)

Conforming Changes/Persons with Disabilities Act

S.L. 2011-94 (SB 384) amends the North Carolina Persons with Disabilities Protection Act (Act) to conform to federal changes under the Americans with Disabilities Act Amendments of 2008. The Act revises the definition of "disability," states that mitigating measures such as assistive devices will have no bearing in determining whether a disability qualifies under law, and clarifies coverage of impairments that are episodic or in remission. The Act also clarifies provisions pertaining to the affirmative defenses that may be asserted by an employer, and provides that no entity or person covered under the Act may retaliate against or coerce or intimidate a person who exercises rights, or who assists another person in exercising rights, under the Act.

This act became effective May 26, 2011. (AJ)

Protect Adult Care Home Residents

S.L. 2011-99 (HB 474) requires the development of guidelines for reporting outbreaks of communicable diseases in adult care homes to local health departments, and requires the Division of Health Services Regulation to review an adult care home's compliance with infection prevention requirements as part of the Division's annual inspection. Changes to adult care home infection prevention requirements are made effective January 1, 2012, and include the following:

- Implementation of a written infection control policy.
- Compliance with the facility's infection control policy.
- Updates of the infection control policy.
- Designation of an on-site staff member to direct the facility's infection control activities and insure all staff has proper training.

Additionally, the act makes changes to the training and competency evaluation requirements for adult care home medication aides. The Department of Health and Human Services is responsible for developing a mandatory, annual course for adult care home supervisors on federal Centers for Disease Control and Prevention guidelines by December 1, 2011.

This act became effective May 31, 2011. (AJ)

Additional Section 1915 Medicaid Waiver Sites

S.L. 2011-102 (SB 316) repeals a provision of the 2010 Appropriations Act which directed an expansion of the capitated 1915 (b)/(c) Medicaid waiver as a demonstration program, but limited the expansion to an additional two Local Management Entities. The repealed provision conditioned further expansion and any expansion of the PBH (formerly Piedmont Behavioral Health) beyond its existing catchment area until after an evaluation and subsequent report to the General Assembly.

The act authorizes a State facility to disclose confidential information for the purpose of collecting certain payments due to the facility, and replaces the term "budgetary surplus" with the term "fund balance" as the provision relates to distribution by pro-rata share upon dissolution of an area authority for mental health, developmental disabilities, and substance abuse services.

This act became effective June 2, 2011. (SP)

Home Care Agency Licensure Moratorium In-Home Aide Services

S.L. 2011-145, Sec. 10.49A (HB 200, Sec. 10.49A), as amended by Section 26A of S.L. 2011-391 (Sec. 26A, HB 22), establishes a three-year moratorium, beginning July 1, 2011, on the issuance of licenses by the Department of Health and Human Services for certain Home Care Agencies planning to offer in-home aide services. The act authorizes the processing of license applications received by July 1, 2011, and accompanied by payment of the required fees.

This section became effective July 1, 2011. (SB)

Gfeller-Waller Concussion Awareness Act

S.L. 2011-147 (HB 792). See **Education**.

Eugenics Records/Public Records Exemption

S.L. 2011-188 (HB 374) provides that records in the custody of the State and the North Carolina Justice for Sterilization Foundation pertaining to the North Carolina Eugenics Board program are not public records to the extent the records concern any of the following:

- Persons impacted by the program.
- Persons or their guardians or authorized agents inquiring about the impact of the program on them.
- Persons or their guardians or authorized agents inquiring about the potential impact of the program on others.

A person impacted by the program, or the guardian or authorized agent of that person, may obtain that person's individual records under the program.

This act became effective June 22, 2011. (TM)

Allow Physician Assistants and Nurse Practitioners to Sign Death Certificates

S.L. 2011-197 (HB 331) amends the Public Health Law to authorize physician assistants and nurse practitioners to complete and sign a medical certification for a death certificate. The act amends other related provisions accordingly, including the use of electronic signatures, stating the cause of death and reporting requirements.

This act became effective October 1, 2011. (SP)

Exclusions from Licensure: Home Services

S.L. 2011-202 (HB 509) provides an exclusion from the requirement that facilities for the mentally ill, developmentally disabled, and substance abusers be licensed by the Secretary of the Department of Health and Human Services. The exclusion allows the provision of 3 or more hours of day services or up to 24 hours of residential services to up to 3 adults, at least 2 of whom are mentally ill, developmentally disabled, or a substance abuser, in a home which they either rent or own together. Persons with disabilities cannot be required to move into an institutional setting if they change services or service providers or discontinue services.

This act became effective June 23, 2011. (JP)

Nursing Homes/Food Service Inspections

S.L. 2011-226 (HB 622) reduces the frequency of food service inspections for nursing homes or beds licensed under the Nursing Home Licensure Act or the Hospital Licensure Act, if the facility:

- Is certified by the Centers for Medicare and Medicaid Services.
- Obtained a grade "A" sanitation rating at its last food service inspection.

The act authorizes the county to perform additional food service inspections in response to a complaint or in the interest of public safety.

This act became effective October 1, 2011. (SP)

Stop Methamphetamine Labs

S.L. 2011-240 (HB 12) requires that, prior to the sale of pseudoephedrine products, retailers with internet access must electronically submit required information into the National Precursor Log Exchange and must not complete the transaction if the system generates a stop alert. The submission is in addition to the existing regulation of the sale of pseudoephedrine products, and is required beginning January 1, 2012.

This act became effective June 23, 2011. (SP)

Department of Health and Human Services Penalties and Remedies Revision-Agency Bill

S.L. 2011-249 (HB 397) amends provisions pertaining to the imposition of administrative penalties on nursing care facilities, adult care facilities, and facilities providing services to the mentally ill, developmentally disabled, and substance abusers for violations of State or federal laws or regulations. The act provides for the classification and processing of violations at these facilities, and requires the person making the finding of violation to do the following:

- Orally and immediately inform the facility of the Type A1 violation and the specific findings.
- Require a written plan of protection for abatement of the violation in order to protect clients from further risk of harm.
- Within 15 working days of the investigation, send a report of the findings to the facility.
- Require a plan of correction from the facility describing the steps the facility will take to achieve and maintain compliance.

Type A1 Violation. – Results in death or serious physical harm, abuse, neglect, or exploitation. The Department of Health and Human Services (Department) is required to impose a civil penalty. For facilities serving six or fewer persons, the fine must be not less than $500 or more than $10,000. Facilities serving seven or more must be fined not less than $1,000 or more than $20,000. Failure to correct the violation will result in the assessment of a penalty of $1,000 for each day the violation continues beyond the time specified for correction.

Type A2 Violation. – Results in a substantial risk of death, serious physical harm, abuse, neglect, or exploitation. The Department may assess a penalty, but is not required to do so, taking into consideration the facility's compliance history, preventative measures, and response to previous violations. Failure to correct the violation will result in the assessment of a penalty of up to $1,000 for each day the deficiency continues beyond the time specified for correction.

Type B Violation. – Detrimental to the health, safety, or wellbeing of a resident, but does not result in substantial risk of death or serious physical harm, abuse, neglect, or exploitation.

Repeat Violations. – The Department must impose a civil penalty three times the amount earlier assessed if, within a 12 month period, a facility still under the same management or ownership is cited for a second or subsequent violation and both or all are violations of the same provisions of law or regulation. The treble penalty applies when the appeal rights with regard to the earlier violation are exhausted and penalty payment is expected or has occurred.

Factors to be considered in determining the amount of the initial penalty:

- Substantial risk that serious physical harm, abuse, neglect, or exploitation will occur.
- Serious physical harm, abuse, neglect, or exploitation, without substantial risk of death did occur.
- Serious physical harm, abuse, neglect, or exploitation, with substantial risk of death did occur.
- A client died.
- A client died, and there is substantial risk to others of serious physical harm, abuse, neglect, or exploitation.
- A client died, and there is substantial risk for further client deaths.
- The reasonable diligence of the facility to comply with State and federal laws and regulations.
- Efforts to correct violations.
- Number and type of violations within the previous 36 months.
- Number of clients put at risk by the violation.

Staff Training in Lieu of Penalty. – In lieu of assessing all or part of a penalty, the Secretary may order a facility to provide staff training specific to the violation, as approved by the Department.

The act directs the Department to impose a $50 per day penalty for failure to allow an authorized representative to inspect the premises and records of the facility. For facilities serving the mentally ill, developmentally disabled, or substance abusers, any penalty imposed will commence on the date of the letter of notification of the penalty amount. For adult care facilities and nursing homes, any penalty imposed commences on the date the violation is identified.

This act became effective June 23, 2011. (SP)

Streamline Oversight of Service Providers by the Department of Health and Human Services

S.L. 2011-253 (HB 618) directs the Secretary of the Department of Health and Human Services (Department) to prepare a rate-setting memorandum on changes in service definition, policy, rule, or provider requirements proposed by the Department, to establish a new task force to evaluate the North Carolina Treatment Outcomes Program Performance System (NC-TOPPS), to allow private sector development of an Internet-based data archive for provider records, and to annually review policy changes made by national accrediting bodies to avoid duplication of agency-level policies and procedures.

This act became effective June 23, 2011. (SP)

Revise Laws on Adult Care Homes

S.L. 2011-258 (HB 808) amends the law pertaining to the inspection and monitoring of adult care homes and allows an informal dispute resolution procedure for adult care homes disputing inspection deficiencies. This act allows waiver of the annual inspection of an adult care home if the adult care home has achieved the highest rating in accordance with rules adopted by the North Carolina Medical Care Commission. However, adult care homes granted a waiver of annual inspections must be inspected at least once every two years by the Division of Health Service Regulation, Department of Health and Human Services. The act requires the Division to

offer each adult care home the opportunity to informally resolve disputed findings from inspections conducted by the Division

This act became effective October 1, 2011. (TM)

Statewide Expansion of 1915(b)/(c) Waiver

S.L. 2011-264 (HB 916) directs the Department of Health and Human Services (Department) to make the following changes with regard to the delivery of services to individuals with mental illness, intellectual and developmental disabilities, and substance abuse disorders:

System change. – The act directs the Department to establish a system to deliver public services statewide to persons with mental illness, intellectual and developmental disabilities, and substance abuse disorders by expanding the 1915(b)/(c) Medicaid Waiver program. The Department is to complete restructuring of management responsibilities for all public resources for Mental Health/Developmental Disabilities/Substance Abuse Services programs by July 1, 2013, by doing the following:

- Becoming accountable for developing and managing a local system that provides easy access to care, makes available and delivers required services, and provides continuity of care.
- Adhering to the Piedmont Behavioral Health (PBH) system model.
- Within catchment areas, designating a single Local Management Entity (LME), either by merger or interlocal agreements (with one lead LME), to be responsible for all aspects of Waiver management.
- Employing specified managed care strategies to control costs while ensuring that consumers receive medically necessary care, including care coordination and utilization management.
- Phasing out the Community Alternatives Program for Mentally Retarded/Developmentally Disabled Individuals (CAP-MR/DD) and utilization management functions currently performed by other contractors.
- Designing the Innovations waiver to serve a greater number of qualified individuals within funding limits.
- Requiring 1915(b)/(c) Waiver-approved LMEs to maintain a community presence; implement a feedback and information exchange process to communicate with consumers, providers, and others; create systems for communication and care coordination with other organized systems, such as local social service agencies, hospitals, schools, and other community agencies; and comply with specific operational requirements.

LMEs to operate 1915(b)/(c) Waivers. – The act directs the Department, by August 1, 2011, to select LMEs which meet the minimum Waiver operations criteria according to specified requirements. The act further directs the Department to cause LMEs failing to meet minimum operational requirements by January 1, 2013, to merge or align with an approved LME, and provides that under an interlocal agreement, a single LME is responsible for all Waiver operations and contract requirements.

Local government limited liability. – County governments are not financially liable for cost overruns associated with the area authority's or single/multi-county program's Waiver operation beyond that entity's risk reserve and Medicaid fund balance amounts.

Services for persons with Intellectual and Developmental Disability (IDD). – The act directs the Department to assess, by December 31, 2011, the feasibility of adding habilitation services through the 1915(i) Option for Medicaid enrollees with intellectual and developmental disabilities (IDD) who are not enrolled in the Innovations Waiver and are not residing in an Intermediate Care Facility for Individuals with Mental Retardation (ICF-MR). The act further directs the Department to consider impacts on ICF-MR facilities and evaluate and minimize possible inconsistencies between certificate of need requirements and the viability and

success of 1915(b)/(c) Waiver programs, and to discontinue for non-waiver LMEs the Supports Intensity Scale pilot program authorized in the 2010 Appropriations Act.

Managed Care Systems. – The act directs the Department to adopt written policies to align objectives of the 1915(b)/(c) Waiver and the care of eligible consumers with other managed care systems, including Community Care of North Carolina.

Reinvestment of Projected Savings. – The act asks future General Assemblies to consider reinvesting 15% or more of the projected savings from operating the Waiver to increase the number of consumers served by the Innovations Waiver or to expand services for persons with intellectual and developmental disabilities.

Reporting requirements. – The act directs the Department, in coordination with other specified agencies, to submit a strategic plan for implementing this act to the appropriate legislative oversight committee by October 1, 2011, and to submit periodic status reports to the General Assembly as to the progress of the restructuring and expansion authorized in the act.

LME catchment population. – By July 1, 2012, the minimum population of an area authority or county program must be at least 300,000. The Department will reduce administrative funding of LMEs that do not comply with the minimum population to a rate consistent with catchments of 300,000. By July 1, 2013, the minimum population of an area authority or county program must be at least 500,000. The Department will reassign management responsibilities for State and federal pass-through funding from LMEs not in compliance with the minimum population requirements. The dissolution of an area authority not meeting minimum population requirements is effective at any time during the fiscal year.

Rules not subject to the APA. – The act exempts the Department from rule-making requirements of the Administrative Procedure Act in implementing, operating, or overseeing new or amending existing Waiver programs.

This act became effective June 23, 2011. (JP)

Discharge of Adult Care Home Residents

S.L. 2011-272 (HB 677) establishes procedures for the discharge of adult care home residents and provides an appeals process for those discharge decisions. Written notice must be given to the proper individuals 30 days prior to the discharge, and the notice must include specific information. If a discharge location is not known or is not appropriate for the resident, an adult care home resident discharge team will be convened to assist with placement of the resident. A resident may appeal the discharge notice to the Hearing Unit. While under appeal, the resident will remain in the facility, unless one of the following applies:

- The discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility.
- The safety of other individuals in the facility is endangered.
- The health of other individuals in the facility is endangered.

This act became effective October 1, 2011. (AJ)

Facilitate Transfer State Psychiatric Hospital Beds to Community Facilities

S.L. 2011-275 (SB 578) authorizes the Secretary of the Department of Health and Human Services (Department) to transfer beds without the written memorandum agreement between the Local Management Entity and the facility submitting the proposal, if the entity/facility proposing to operate the beds:

- Submits an application to the Certificate of Need Section within the Department.
- Commits to serve the type of short-term patients normally placed at the State psychiatric hospital.
- Is a hospital authority created pursuant to G.S. 131E-17.

- Is located in a single county area authority.

This act became effective June 23, 2011, and expired December 31, 2011. (SP)

Conform Medical Record Laws

S.L. 2011-314 (SB 607) amends multiple statutes governing the use of confidential medical information to authorize disclosure for purposes permitted by the Health Insurance Portability and Accountability Act, including the Pharmacy Practice Act, and laws pertaining to mental health, public health, adult care homes, and the home health care setting.

This act becomes effective January 1, 2012. (SP)

Exempt Cooking Schools from Food Regulations

S.L. 2011-335 (SB 346) adds bona fide cooking schools to the list of entities exempt from regulations governing the sanitation of establishments that prepare or serve drink or food. The act defines bona fide cooking schools as cooking schools that:

- Primarily provide courses or instruction in food preparation techniques that participants can replicate in their homes.
- Prepare or serve food for cooking school participants during instructional time only.
- Do not otherwise prepare or serve food to the public.

This act became effective June 27, 2011. (TM)

Facilitate Statewide Health Information Exchange

S.L. 2011-337 (SB 375) creates the North Carolina Health Information Exchange to provide a uniform and regulated method of sharing individually identifiable health information among health care providers, health plans, and health care clearinghouses through the use of a voluntary statewide health information exchange network.

This act became effective October 1, 2011. (SP)

Enact First Evaluation Program

S.L. 2011-346 (SB 437) authorizes the Secretary of the Department of Health and Human Services to allow appropriately trained licensed clinical social workers, master's level psychiatric nurses, or master's level certified clinical addictions specialists to conduct initial (first-level) examinations for the involuntary commitment of individuals with mental illness, in a manner consistent with the First Evaluation Pilot Program.

This act became effective October 1, 2011. (SP)

Photo Identification for Certain Controlled Substances

S.L. 2011-349 (SB 474) makes changes to procedures for the legal purchase of Schedule II controlled substances. The act establishes requirements for the dispensing of Schedule II controlled substances by pharmacies, including the following:

- The person seeking the dispensation must present one of the following:
  - A driver's license.
  - A special identification card issued by the Division of Motor Vehicles.
  - A military identification card.
  - A passport.
- Pharmacies are required to document the identifying information presented, and retain the information for three years.

- Within 72 hours of a request by an authorized person, the pharmacy must provide the identifying information to the authorized person or to the controlled substances reporting system.

The person seeking the dispensation need not be the patient. The act does not include dispensations to health care facilities.

This act becomes effective March 1, 2012. (JP)

Birth Certificate - Stillborn Infants

S.L. 2011-357 (SB 770) permits either parent of a stillborn child to file an application with the State Registrar to obtain a certificate of birth resulting in stillbirth. The certificate is based on the fetal death report and must clearly indicate that it is not a proof of live birth. The certificate must not include a reference to the name of the stillborn child if the fetal death report does not contain a name and the parent filing the application does not elect to provide a name.

The State Registrar is prohibited from issuing a certificate for deaths occurring prior to July 1, 2001, without a certified copy of the fetal death report.

This act became effective October 1, 2011. (SP)

Establish Pharmacy Audit Rights

S.L. 2011-375 (HB 644) establishes standards for audits of the records of a pharmacy by a managed care company, an insurance company, a third-party payer, or any entity representing an entity responsible for payment of claims for health care services. The act establishes a process for pharmacy audit recoupments, and requires each entity conducting an audit of a pharmacy to establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report. The new provisions do not apply to Medicaid fraud, insurance fraud, or other criminal fraud-related audits, reviews, and investigations.

This act imposes the following requirements with regard to the Medicaid Provider Reconsideration Review Process:

- Notwithstanding any rules to the contrary, a provider must submit to the Division of Medical Assistance a written request for a Reconsideration Review within 30 working days from the date of the receipt of notice of tentative decision. Failure to request a Reconsideration Review in the specified time will result in the implementation of the tentative decision as the Division's final decision.
- Any provider who received notice of a tentative decision on or after March 1, 2011, must be eligible to resubmit a written request for Reconsideration Review within 30 working days of this act becoming law. The Department of Health and Human Services must amend any rule in conflict with this provision.

The portion of the act pertaining to pharmacy audits becomes effective January 1, 2012, and applies to audits of pharmacies conducted on or after that date. The portion of the act pertaining to the Medicaid Provider Reconsideration Review Process became effective June 27, 2011. (AJ)

Model Health Care-Associated Infections Law

S.L. 2011-386 (HB 809) directs the Department of Health and Human Services (Department) to establish a statewide surveillance and reporting system for health care-associated infections (HAI). The act authorizes the Commission for Public Health to adopt rules to implement a statewide HAI reporting system. The rules must specify uniform standards including, at a minimum, a preference for electronic surveillance and a requirement of electronic reporting.

All hospitals licensed by the Division of Health Service Regulation are subject to the statewide surveillance and reporting system. In addition, the hospitals are responsible for the

surveillance and reporting of HAI data to the Department using the National Healthcare Safety Network (NHSN) managed by the Centers for Disease Control and Prevention. The act authorizes the Department to release collected HAI data that does not contain personal identifying information, only if the Department considers release of the data as reliable and necessary to protect the public's health.

The act directs the Department to report annually to the General Assembly on its activities related to HAI, beginning December 31, 2011.

This act became effective June 27, 2011. (SB)

Medicaid and Health Choice Provider Requirements

S.L. 2011-399 (SB 496) adds a new chapter (Chapter 108C) to the General Statutes, which applies to all providers enrolled in Medicaid and North Carolina Health Choice. The act outlines the provider screening requirements and categorical risk provider types, and requires criminal history records checks for providers in accordance with federal law. New applicants for provider enrollment must submit an attestation that the provider does not owe any final overpayments, assessments, or fines to Medicaid or Health Choice in North Carolina or any other state, and is compliant with federal law. New applicants also must attend trainings regarding Medicaid billing and fraud. The Department of Health and Human Services (Department) is authorized to establish a registry of billing agents, clearinghouses, and alternate payees that submit claims on behalf of providers.

The Department has authority to suspend payments to providers pursuant to federal law. The Department also may suspend payments to any provider who owes a final overpayment, assessment, or fine to the Department but has not entered into a payment plan with the Department or any provider who has had its participation in Medicaid or Health Choice suspended or terminated. The act authorizes audits and requires provider cooperation. The act outlines a process for requiring a provider to undergo prepayment claims review should there exist grounds for such review. Provider appeals are considered a contested case subject to the Administrative Procedure Act.

This act expressly authorizes the Department to adopt temporary and permanent rules with regard to Medicaid and NC Health Choice, as well as for changing medical policy pertaining to Medicaid.

The portion of the act related to the registry of billing agents, clearinghouses, and alternate payees, and the portion of the act pertaining to the adoption of rules regarding medical policy becomes effective January 1, 2012. The remainder of the act became effective July 25, 2011, and applies to audits instituted on or after that date and final overpayments, assessments, or fines due on or after that date. (AJ)

Abortion - Woman's Right to Know Act

S.L. 2011-405 (HB 854) provides that an abortion may not be performed without the pregnant woman's voluntary and informed consent, and requires that specific conditions be fulfilled prior to an abortion being performed.

At least 24 hours prior to the abortion, a physician or qualified personnel must orally inform the woman (by telephone or in person) of *all of the following*:

- The name of the physician who will perform the abortion.
- The medical risks associated with the procedure to be used.
- The probable gestational age of the unborn child.
- The medical risks associated with carrying the unborn child to term.
- That ultrasound imaging and heart tone monitoring are available; the sources of information providing the phone numbers and addresses of facilities that offer these

services free of charge; and, if requested by the woman, the list compiled by the Department of Health and Human Services (Department).

- The fact that the physician who is to perform the abortion has no liability insurance for malpractice, if that is the case.
- The location of the hospital offering obstetrical or gynecological care within 30 miles of the abortion to be performed, and at which the physician performing the abortion has clinical privileges. If the physician has no local admitting privileges, that information must be communicated.
- Medical assistance may be available for prenatal care, childbirth, and neonatal care.
- Public assistance programs may or may not be available as benefits under federal or State programs.
- That the father is liable to assist in child support, even if he has offered to pay for the abortion.
- That there are alternatives to abortion, including keeping the baby or placing the baby for adoption.
- The right to review printed materials (see G.S. 90-21.83), and the availability of materials on a State Web site. The woman must be informed that the Department has materials that describe the unborn child and that lists agencies that offer alternatives to abortion. The materials must be given to the woman at least 24 hours before the abortion or mailed at least 72 hours before the abortion by certified mail, restricted delivery, if the woman requests the materials other than on the Web site.
- That the woman may withhold or withdraw consent at any time before or during the abortion without losing any benefits to which she may be entitled.

The act also provides for recordkeeping requirements and civil remedies for knowing or reckless violations of the act.

This act became effective October 26, 2011. (SP)

Studies

Referrals to Existing Commissions/Committees

Extend Hearing Loss Task Force

S.L. 2011-20 (HB 60) amends S.L. 2010-121 to extend, from November 15, 2010, to November 15, 2011, the reporting date for the Hearing Loss Task Force to present its findings and recommendations to the General Assembly. The Task Force was required by S.L. 2010-121 to develop recommended guidelines for consumers seeking information and assistance in the treatment of hearing loss and the purchase of a hearing aid. The Task Force is coordinated by the Hearing Aid Dealers and Fitters Board and includes a licensed practicing fitter and seller of hearing aids; a consumer of hearing aids; a practicing audiologist; a physician who treats patients with hearing loss; 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, Office of the Attorney General; and may include other interested stakeholders.

This act became effective March 31, 2011. (SB)

Referrals to Departments, Agencies, Etc.

Authorize Overnight Respite Pilot

S.L. 2011-104 (SB 512) requires the Department of Health and Human Services (Department) to conduct a pilot program to assess the provision of overnight respite services in

adult day care programs. The pilot must include at least two, but not more than four, stable and successful certified adult day care programs. Adult day care programs selected for the pilot are exempt from specified licensure requirements, but are subject to Department rules to ensure the health and safety of overnight respite participants. The Division must inspect facilities before allowing the provision of overnight respite services, and must monitor visits and investigate complaints. The Division may terminate the pilot program or suspend admission at any time if noncompliance with regulations results in death or serious physical harm, or a substantial risk of death or serious physical harm.

The Department is required to submit annual reports to the General Assembly's Program Evaluation Division on the status of the pilot program. The Program Evaluation Division must report to the General Assembly on or before October 1, 2014, on the feasibility of continuing to provide overnight respite services in adult day care programs.

The act became effective June 2, 2011. Adult day care programs participating in the pilot must be selected and have received an initial inspection by January 1, 2012. The act is repealed effective June 1, 2015. (TM)

Smart Card Biometrics Against Medicaid Fraud

S.L. 2011-117 (SB 307) establishes the North Carolina Smart Card Pilot Program to replace existing Medicaid assistance cards with Smart Cards. Smart Cards can store a variety of digital information on a card that is about the size of a typical credit card. The Pilot Program is designed to do the following:

- Authenticate recipients at the onset and completion of each point of transaction.
- Deny ineligible persons at the point of transaction.
- Authenticate providers at the point of transaction.
- Secure and protect the personal identity and information of recipients.
- Reduce the total amount of medical assistance expenditures by reducing average cost per recipient.

The Pilot Program will last from 6 to 12 months and will not be expanded unless Department of Health and Human Services (Department) data indicates the program can be expanded through program savings. The act outlines minimum criteria that must be established for the program to be considered a success. By June 30, 2012, the Department must submit a written report to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the chairs of the Senate and House Appropriations Committees, and the Fiscal Research Division on the implementation and success of the pilot program.

This act became effective June 13, 2011. (AJ)

Utilization Review - Public School and Public Health Nurses

S.L. 2011-145, Sec. 6.9 (HB 200, Sec. 6.9) requires the General Assembly's Fiscal Research Division to review all federal and State funded public school nurse positions to determine the most effective and efficient ways to provide nursing services to students in public schools. The Fiscal Research Division must report its findings to the House and Senate Appropriations Committees by May 1, 2012.

This section became effective July 1, 2011. (SB)

Department of Health and Human Services Regulatory Functions Study and Plan

S.L. 2011-145, Sec. 10.17 (HB 200, Sec. 10.17) authorizes the Department of Health and Human Services to examine regulatory functions of Divisions within the Department. The act directs the Department to report on a plan to consolidate regulatory functions to the Joint

Appropriations Subcommittees on Health and Human Services and the Fiscal Research Division by January 30, 2012.

This section became effective July 1, 2011. (SB)

Health Information Technology

S.L. 2011-145, Sec. 10.24 (HB 200, Sec. 10.24) directs the Department of Health and Human Services (Department) to coordinate health information technology (HIT) policies and programs within the State to ensure the coordination of all public and private HIT efforts. Beginning October 1, 2011, the Department must report quarterly on the status of federal and State HIT efforts to the House of Representatives Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and Fiscal Research Division.

This section became effective July 1, 2011. (SB)

Medicaid Management Information System (MMIS) Funds - Implementation of MMIS

S.L. 2011-145, Sec. 10.29 (HB 200, Sec. 10.29) directs the Department of Health and Human Services (Department) to provide to the General Assembly specific detailed cost information on the replacement Medicaid Management Information System (MMIS).

The legislation authorizes the Secretary of the Department to use prior year earned revenue in the amount of $3.2 million for fiscal year 2011-12 and $12 million for fiscal year 2012-13 for the new MMIS. If the Department does not receive prior year earned revenues in those amounts, it may, with the approval of the Office of State Budget and Management, use other overrealized receipts and appropriated funds.

The section requires the Department to make full development of MMIS a top priority and to develop plans to ensure certain capabilities. It further authorizes the Department to engage private counsel with information technology and computer law expertise to review requests for proposals and negotiate contracts. The Department is required to develop schedules for development and implementation of MMIS and make quarterly reports on changes in its functionality and costs. Reports must include any changes to MMIS vendor contracts and provide detailed explanations for any cost increases.

This section became effective July 1, 2011. (JP)

Medication Therapy Management Pilot

S.L. 2011-145, Sec. 10.42 (HB 200, Sec. 10.42) directs the Department of Health and Human Services (Department) to develop a two-year medication therapy management pilot program to be administered through Community Care of North Carolina (CCNC) to determine (1) the best method of adapting the ChecKmedsNC program to the Medicaid program and CCNC's Medical Homes, and (2) the most effective and efficient role for community-based pharmacists as active members of CCNC's care management team.

The section sets forth the required elements of the pilot program and requires CCNC to report on the development and implementation of the pilot program on January 1, 2012, and every six months thereafter, to the Department, the House and Senate Appropriations Subcommittees on Health and Human Services, and the Fiscal Research Division. The legislation also directs that funding for the pilot program must be made available through the Enhanced Federal Funding for Health Homes for the Chronically Ill.

This section became effective July 1, 2011. (JP)

Pilot Release of Inmates to Adult Care Homes

S.L. 2011-389 (HB 678) directs the Department of Health and Human Services (Department) to establish a pilot program addressing inmates in need of personal care services and medication management who are terminally ill or permanently and totally disabled and do not pose a significant safety risk, or who have received a medical release from the Department of Correction (DOC). The Department must select one adult care home in the State to participate in the pilot program. The adult care home is prohibited from having or admitting any residents other than the selected inmates. The Department has the discretion to waive any rules relating to inspection and licensing of facilities necessary to protect public health and safety. The Department and DOC are required to report cost/benefit findings and recommendations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee not later than 18 months after the participating home admits its first resident.

This act became effective June 28, 2011. (SP)

Major Pending Legislation

North Carolina Health Benefit Exchange

HB 115. See **Insurance**.

Expand Pharmacists' Immunizing Authority

SB 246 would authorize an "immunizing pharmacist" (defined term) to administer vaccines or immunizations pursuant to protocols developed by the State Health Director. Currently a pharmacist who has received special training is permitted to administer drugs pursuant to a specific prescription order in accordance with rules adopted by the Board of Pharmacy, Board of Nursing, and Board of Medicine. The current rule provides standards for pharmacists engaged in the administration of influenza, pneumococcal, and zoster vaccines for persons 18 years and older.

SB 246 would amend the Pharmacy Practice Act (Act) by defining the term "immunizing pharmacist" as a licensed pharmacist who holds a current Cardiopulmonary Resuscitation (CPR) certification, completes a certificate program in vaccine administration, maintains documentation of continuing education in vaccine administration, has successfully completed training for participation in the North Carolina Immunization Registry, enrolls with a local supervising health department, registers with the North Carolina Board of Pharmacy, and administers vaccines or immunizations in accordance with rules and with the following limitations:

Age	Parental Permission	Standing Order	Prescription:	Under Protocol*
Under 14 Years Old	No	No	No	N/A
At Least 14 (Flu Vaccine)	<18	N/A	N/A	Current
At Least 14 < 18 Years Old (Vaccines other than Flu)	Yes	No	Required	
At Least 18 Years Old	N/A	Yes, or	Yes, or	Developed by SHD

The bill would require an immunizing pharmacist who administers vaccines or immunizations to do the following:

- Maintain a record of the vaccine or immunization administered in the patient profile.
- Notify the primary care provider (if the patient so identifies) within 24 hours of the administration, and notify either the prescribing physician, physician who issued standing order, or the local health department depending on which authority the vaccine was administered.
- Access the North Carolina Immunization Registry prior to administering any vaccine or immunization, other than influenza, and record all vaccines or immunizations administered under the Act in the Registry within 24 hours of the administration.

SB 246 passed the Senate and is pending in the House Committee on Health and Human Services. (SP)

Local Human Services Administration

SB 433 would allow a board of county commissioners to assume direct control of activities conducted by a board of health; social services board; area board on mental health, developmental disabilities, and substance abuse services; or any commission, board, or agency appointed by or acting under the authority of the board of county commissioners. The bill would allow the board of commissioners to elect to subject certain employees of the consolidated human service agency to the provisions of the State Personnel Act.

SB 433 would establish a Public Health Improvement Incentive Program to provide monetary incentives for the creation and expansion of multicounty local health departments and require that local health departments be accredited in order to receive State and federal pass through funding.

SB 433 would rewrite the essential public health services provision of the public health law and would direct the Program Evaluation Division to study and report on the feasibility of a transfer of functions, duties, and obligations of the Division of Public Health to the University of North Carolina Healthcare System and/or the School of Public Health at The University of North Carolina.

SB 433 passed the Senate and is pending in the House Committee on Health and Human Services. (SP)

Dentistry Management Arrangements

SB 655 would prohibit any dentist, professional entity, or management company, from entering into a management agreement unless specific requirements are met. All management agreements would be submitted to the North Carolina State Board of Dental Examiners for a determination of compliance with the specified requirements. An appeals process would be established for any entity contesting the Board's determination.

SB 655 passed the Senate and is pending in the House Committee on Health and Human Services. (AJ)

Require Community Service/Work First Program

SB 675 would make changes to the Work First Program including:

- Individuals participating in Job Search/Job Readiness programs for less than four consecutive weeks would be required to participate in four hours per month of community service.
- Individuals participating in Job Search/Job Readiness programs for four consecutive weeks would be required to participate in additional community service hours.

- No individual would be allowed to participate in the Job Search/Job Readiness program for more than 12 weeks per year. Of these 12 weeks, no more than 8 weeks may be consecutive.

Additionally, SB 675 would require the Department of Health and Human Services (Department) to exempt all vehicles owned or leased by individuals within a household when the Department is considering resources for eligibility determinations. The total value of the exemption would not exceed $15,000.

SB 675 passed the Senate and is pending in the House Committee on Health and Human Services. (AJ)

Vetoed Legislation

Protect Health Care Freedom

HB 2. See **Vetoed Legislation.**

Chapter 14
Insurance

Kory Goldsmith (KG), Tim Hovis (TH), Amy Jo Johnson (AJ),
Shawn Parker (SP), Bill Patterson (BP)

Enacted Legislation

Building Codes

Building Code Rules/Effective Dates

S.L. 2011-269 (SB 708) provides for certain rules adopted by the Building Code Council on April 21, 2011, to become effective January 1, 2012. The act also provides that the 2012 North Carolina Energy Conservation Code and the 2012 North Carolina Residential Code, as adopted by the Building Code Council on December 14, 2010, take effect on January 1, 2012, with a mandatory compliance date of March 1, 2012.

This act became effective June 23, 2011. (SP)

Building Codes/Expand Equine Exemption

S.L. 2011-364 (HB 329) requires that any farm building that otherwise might qualify for exemption from building rules must remain subject to an annual safety inspection of any grandstand, bleacher, or other spectator-seating structure within the farm building. The inspection must include an evaluation of the spectator-seating structure's compliance with applicable building codes in effect at the time of the construction of the structure.

This act became effective June 23, 2011, and applies to all farm buildings, including those where construction began or was completed prior to June 23, 2011. (SP)

Group Life Insurance

Insurance Changes to Payments and Group Life

S.L. 2011-215 (HB 373) authorizes the use of debit cards for payment of premiums, and allows the payment of premiums by either credit or debit card if the insurer does not discriminate among individuals of the same class when allowing payment by credit or debit card.

The bill also authorizes the issuance of life insurance coverage for certain non-traditional groups. Non-traditional groups include, for example, church congregations, students, or volunteer emergency first-responders. Before authorizing issuance to the non-traditional group, the Commissioner must find one of the following:

- Issuance of the policy is not contrary to the public interest, would result in economies of acquisition and administration, and benefits under the policy are reasonable in relation to premiums charged.
- Another state with requirements substantially similar to those listed above has made a determination that the requirements noted above have been met.

To be approved, premiums must be paid from the policyholder's funds or funds contributed by covered persons. In addition, insurers must be able to exclude or limit coverage on any person with unsatisfactory evidence of individual insurability.

This act became effective October 1, 2011. (TH)

Disclosure/Group Life Insurance

S.L. 2011-229 (HB 664) permits a licensed funeral director or a person employed by a licensed funeral home to obtain information from an insurer about coverage for a deceased person under a group life insurance policy.

It also clarifies that the requirement to disclose requested information applies to life insurance companies and to all contracts subject to State laws governing Life Insurance and Viatical Settlements.

This act became effective June 23, 2011. (BP)

Health Insurance

Amend Health Insurance Risk Pool Statutes

S.L. 2011-58 (HB 138) makes the following changes to the North Carolina Risk Pool:

- Increases from two to three the number of successive terms a member of the Pool's Board of Directors may serve. The North Carolina Risk Pool likely will cease to operate if the federal Affordable Care Act becomes fully effective in 2014. This change will allow a greater number of existing Board members to oversee the possible phasing out of the Pool.
- Authorizes the Pool to offer premium subsidies from the Pool's own funds, not to exceed the amount of the subsidies of the most recent year the Pool received a federal grant for premium subsidies. The law previously allowed the Pool to offer premium subsidies only if federal grants were available.
- Reduces rates from a range of 150%-200% to a range of 135%-175% of standard rates for individuals charged by other insurers. Pool rates are set to ensure that the Pool does not compete with other insurers.
- Provides eligibility for Pool coverage to State residents who have not exhausted current COBRA health insurance coverage at a rate exceeding the Pool rate and who, in addition, meet one of the following four conditions:
  - Have been rejected by an insurer for health reasons.
  - Have been offered coverage only with a conditional rider.
  - Have been refused coverage except at a rate exceeding the Pool rate.
  - Have one of the medical or health conditions listed by the Board as eligible for coverage.
- Reduces the time period from 12 to 6 months during which Pool coverage excludes charges and conditions for preexisting conditions for which advice or care was recommended during the 12-month period preceding coverage by the Pool.

This act became effective April 28, 2011. (TH)

State Health Plan/Appropriations and Transfer II

S.L. 2011-85 (SB 323). See **State Government**.

State Health Plan/Additional Changes

S.L. 2011-96 (HB 578). See **State Government**.

Health Care Sharing Organizations

S.L. 2011-103 (SB 608) exempts health care sharing organizations from the jurisdiction of the Commissioner of Insurance. To qualify as a heath care sharing organization, an organization must satisfy the following requirements:

- Maintain nonprofit entity status.
- Limit its participants to persons sharing similar interests.
- Provide for the financial or medical needs of its participants through participant contributions.
- Provide amounts that participants may contribute with no assumption of risk or promise to pay among the participants.
- Assume no risk or promise to pay to its participants.
- Publish a written monthly statement to all participants listing the total dollar amount of qualified needs and the amount assigned to its participants for their contribution.
- Provide a written disclaimer, the substance of which is set forth in the act, on or accompanying all applications and guideline materials.

This act became effective October 1, 2011. (TH)

Facilitate Locum Tenens Physicians

S.L. 2011-315 (SB 609) requires an insurer providing a health benefit plan to establish and maintain a process to allow a patient's regular physician, a medical group, or a hospital to submit a claim, and if the claim is accepted, to receive payment for covered visit services provided by a locum tenens physician (a physician who substitutes for a regular physician on a temporary basis and is not an employee of the regular physician) if:

- The regular physician is unavailable to provide the services or the locum tenens physician is assisting the physician.
- The patient has arranged or seeks to receive the visit services from the regular physician.
- The locum tenens physician does not provide visit services for an individual physician for more than 90 days.
- The proper code is used when submitting the claim to the insurer.
- The locum tenens physician is paid on a per diem or a fee-for-time basis.
- The regular physician maintains a record of each service provided by the locum tenens physician, which is available upon the insurer's request.

Locum tenens agencies may contract with regular physicians, medical groups, hospitals, and locum tenens physicians if:

- The agency charges fees that are reasonably related to the value of services.
- The agency does not interfere with or attempt to influence the clinical judgment of a physician.

The act allows the Secretary of Health and Human Services to implement a Medicaid assessment program for any willing provider under federal regulations. The act also authorizes any licensed pharmacist allowed by rule to administer certain vaccines to administer the influenza vaccine to patients 14 years and older.

The portions of this act pertaining to locum tenens physicians and Medicaid assessments became effective October 1, 2011. The portions of this act pertaining to administration of the influenza vaccine became effective June 27, 2011. (AJ)

Miscellaneous

Surplus Lines/Premium Tax-Agency Bill

S.L. 2011-120 (SB 321) makes changes to the law governing surplus lines insurers to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), including the following:

- Authorizes the Commissioner to participate in a national insurance producer database for the licensing of surplus lines insurers and to contract with nongovernmental entities to collect the appropriate licensing fees and surplus lines premium taxes.
- Directs the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the potential impact that would result from the State's entrance into a nonadmitted insurance interstate agreement and to determine which compact or agreement would result in retention of the most surplus lines tax revenue for the State. The act directs the Revenue Laws Study Committee to report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.
- Defines "home state" as the principal place of business or principal residence of the insured, as required by the NRRA.
- Provides that a surplus lines insurer be required to obtain authorization to write insurance only in its domiciliary state, as provided in the NRRA.
- Provides a streamlined process by which a surplus lines licensee (i.e., a broker or agent) may place surplus lines coverage for certain exempt commercial purchasers without conducting a search to determine whether the insurance can be obtained from admitted insurers. To comply with the new procedure, the licensee must satisfy the following: (1) disclose to the purchaser that the insurance may or may not be available from the admitted market; and (2) the exempt commercial purchaser must subsequently request in writing that the licensee place the insurance with a nonadmitted insurer. The act also provides that nothing prohibits a licensee from procuring surplus lines insurance from a nonadmitted insurer outside of the United States, known as an "alien" insurer, listed on the National Association of Insurance Commissioners (NAIC) Listing of Alien Insurers.
- Conforms State eligibility criteria for surplus lines insurers to the NAIC Nonadmitted Insurance Model Act, as required by the federal NRRA.
- Provides that a North Carolina surplus lines license is required only for those agents or brokers doing business with insureds whose home state is North Carolina. Under the NRRA, only an insured's home state may require a surplus lines broker to be licensed.
- Provides that the surplus lines premium tax is collected on insureds for whom North Carolina is the home state, as required by the NRRA, and also provides that any tax collected must be retained by the State, to the extent portions of an insured risk are located in another state that has failed to enter into a compact with North Carolina.
- Revises the definition of risk retention group to conform to the definition in federal law. This provision is unrelated to the NRRA.

This act became effective July 21, 2011, the same date the NRRA became effective. (TH)

Insurance Amendments-Agency Bill

S.L. 2011-196 (HB 298) makes various changes to Chapter 58 of the General Statutes governing insurance, as explained below.

- Authorizes the Commissioner of Insurance (Commissioner) to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to

provide online license processing and support services to license applicants. (Effective July 1, 2011.)

- Codifies the existing Senior Health Insurance Information Program (SHIIP) in Chapter 58 of the General Statutes governing insurance. SHIIP primarily had been referenced in the Administrative Code (11 NCAC 17.)
- Makes it unlawful to prepare or issue a certificate of insurance that:
  - Is in a form not approved by the Commissioner.
  - Contains any false or misleading information.
  - Purports to alter or amend the coverage provided by the policy. A certificate of insurance does not include "a document prepared or issued by an insurance company or producer that is used to verify or evidence the existence of property insurance provided to a lender covering real or personal property which serves as the lender's security for commercial mortgages." (Effective October 1, 2011.)
- Grants the Commissioner the authority to approve or disapprove rates filed by insurers for small group coverage prior to an insurer's use of the filed rates, known as "prior approval." (Effective July 1, 2011.)
- Creates a defined open enrollment period in the months of January and July of each year for nondependent child coverage, also known as "child only" coverage. (Effective October 1, 2011.)
- Adopts NAIC model language implementing a new "trend test" calculation. The trend test is used to allow the Department of Insurance (Department) to identify a company with insufficient capital in light of the company's assumed risk. (Effective October 1, 2011.)
- Exempts from adjuster licensing requirements those individuals who, solely in connection with insurance covering only portable consumer electronic devices, collect claims information and conduct data entry, and exercise no discretion in the disposition of a portable electronic device claim. (Becomes effective July 1, 2012, and applies to licenses issued on or after that date.)
- Exempts crop loss adjusters from examination requirements applicable to property and casualty adjusters if: (1) the adjuster adjusts only federal crop insurance claims; and (2) the adjuster passes a proficiency examination approved by the federal Risk Management Agency or the Commissioner.
- Makes changes to ease Department regulation of the Association Aggregate Security System of the North Carolina Self-Insurance Guaranty Association. The Association provides for the payment of Workers' Compensation claims brought against a member self-insurer in the case of the member's insolvency. (Effective July 1, 2011.)
- Exempts multiline limited assessable mutual insurance companies from the requirement that application and policy fees may not be charged without the insured's prior written consent.
- Provides that a fee charged by a licensed continuing care facility in a facility's declaration of condominium and provided in a resident's contract for continuing care with the facility is not a transfer fee for the purposes of Chapter 39A of the General Statutes, which prohibits the enforcement of transfer fee covenants running with a title to real property.

Except as noted above, this act became effective June 23, 2011. (TH)

Credit Union Ownership of Insurance Companies

S.L. 2011-221 (HB 501) authorizes credit unions to provide insurance through any insurance company, including any subsidiary insurance company owned by the credit union. The act authorizes the investment of credit union funds in a "company" as well as an "agency or association" and makes conforming statutory changes.

This act became effective October 1, 2011. (BP)

Service Agreements/Allow Reserve Account

S.L. 2011-222 (HB 575) makes a change to the law regulating motor vehicle, home appliance, and mechanical breakdown service agreement companies. Under prior law, service agreement providers were required to maintain insurance for 100% of claims exposure, unless the company maintained an audited net worth of $100 million, had offered service agreement contracts for at least 10 years, and had filed necessary Securities and Exchange Commission forms. In lieu of these requirements, the act allows service agreement providers to maintain a funded reserve account of not less than 40% of gross consideration received on the sale of service contracts for all in-force contracts, less claims paid.

This act became effective July 1, 2011. (TH)

Portable Electronics Insurance Coverage

S.L. 2011-225 (HB 617) requires companies offering insurance against loss, theft, or mechanical failure for portable electronic devices and accessories to hold a limited lines license issued by the North Carolina Department of Insurance. The limited lines license allows any employee or agent of the license holder to sell insurance for portable electronic devices at all the license holder's locations. The Department of Insurance has the same regulatory authority over portable electronics insurance as it has with all limited lines insurance.

The act also imposes specific consumer protection measures on limited lines insurance for portable electronic devices, including the following:

- Written materials available to a prospective customer must disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's existing insurance coverage, state that purchase of the coverage is optional and may be cancelled at any time, and summarize the material terms of the insurance coverage and the process for filing a claim.
- The insurance policy must contain the terms of termination or modification of coverage.
- The insurer underwriting the portable electronics insurance must administer a training program for employees of the license holder. The training program must provide basic instruction about the portable electronics insurance offered to customers and the disclosures required in the written materials available to prospective customers.

This act becomes effective January 1, 2012. (TH)

Clarify Permit Requirement for Collection Agent Employees

S.L. 2011-320 (SB 63) clarifies that a regular employee of a duly licensed collection agency is not required to procure a collection agency permit even if the employee works outside North Carolina.

This act became effective June 27, 2011. (KG)

Allow Salary Protection Insurance

S.L. 2011-370 (HB 453) defines "salary protection insurance" as "insurance against financial loss caused by cessation of earned income because of disability from sickness, ailment, or bodily injury" and expands the definition of "surplus lines insurance" to specifically include salary protection insurance. The act also sets the maximum amount of salary protection insurance plus any in-force disability income insurance at 75% of the individual's annual earned

income, when salary protection insurance benefits are payable to an individual or an individual's beneficiary.

This act became effective October 1, 2011. (KG)

Studies

Referrals to Departments, Agencies, Etc.

Department of Insurance and Affordable Care Act

S.L. 2011-145 (HB 200), as amended by S.L. 2011-391, Sec. 49 (HB 22, Sec. 49), authorizes the Commissioner of Insurance to study the insurance-related provisions of the Affordable Care Act (Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152A) and any other matters deemed necessary to successful compliance with the provisions of the Affordable Care Act and related regulations. If the Commissioner undertakes such a study, a report containing recommendations must be submitted to the 2012 Regular Session of the 2011 General Assembly.

This section became effective July 1, 2011. (BP)

Major Pending Legislation

North Carolina Health Benefit Exchange

House Bill 115 (Fourth Edition), referred to the Committee on Rules and Operations of the Senate on May 31, 2011, would establish the North Carolina Health Benefits Exchange Authority. The Exchange Authority would serve as the Health Benefits Exchange for the facilitation of insurance purchases as stipulated in the federal Patient Protection and Affordable Care Act. HB 115 would provide for the following:

- Creation and authority of a Board of Directors for the Exchange Authority.
- Ethical requirements of the Exchange Authority.
- Duties of the Exchange Authority.
- Requirements for the certification of health benefit plans.
- Funding for the Exchange Authority. (AJ)

Freedom to Negotiate Health Care Rates

Senate Bill 517 (Second Edition), referred to the House Judiciary Committee on June 8, 2011, would provide that contracts between health benefit plans and health care providers cannot:

- Prohibit a participating provider from contracting with another health carrier to provide services at a rate equal to or lower than the payment specified in the contract.
- Require a participating provider to accept a lower payment rate in the event that the provider agrees to provide services to any other carrier at a rate equal to or lower than that specified in the contract.
- Require termination or renegotiation of the contract if the provider agrees to provide services to any other carrier at a rate equal to or lower than that specified in the contract.
- Require the disclosure of a participating provider's contractual rates with another carrier.

- Require the non-negotiated adjustment by the issuer of a participating provider's contractual rate to equal the lowest rate the provider has agreed to charge another carrier.
- Require a participating provider to charge another carrier a rate that is equal to or greater than the rates specified in the contract. (BP)

Mutual Insurance Holding Companies

Senate Bill 647 (Second Edition) would authorize a domestic mutual insurance company to reorganize as a mutual insurance holding company with the approval of two-thirds of its policyholders voting. Members of the mutual insurance company would receive ownership interest in the mutual insurance holding company. The mutual insurance company then would be converted into a stock insurance company held by the holding company. In addition to being approved by the policyholders, the reorganization also would have to be approved by the Commissioner of Insurance as fair and equitable to the policyholders. In addition, the holding company would be required at all times to own a majority of the voting shares of the mutual insurance company.

As a stock insurance company, the mutual insurer would be able to raise capital. In addition, the mutual insurance holding company would not be subject to the limitations on investments applicable to insurers. Following reorganization, the Commissioner of Insurance would retain jurisdiction over the mutual insurance holding company, the mutual insurance company, and any stock insurance subsidiaries, including the approval of all stock offerings and mergers. Senate Bill 647 is pending in the House Committee on Insurance. (BP)

Vetoed Legislation

State Health Plan/Appropriations and Transfer

(SB 265). See **Vetoed Legislation**.

Chapter 15
Labor and Employment

Karen Cochrane-Brown (KCB), Sara Kamprath (SK), Bill Patterson (BP)

Enacted Legislation

General

Employers and Local Government Must Use E-Verify

S.L. 2011-263 (HB 36) requires private employers with 25 or more employees to verify the work authorization of new hires in the United States through E-Verify according to the following schedule:

- October 1, 2012, for employers of 500 or more employees.
- January 1, 2013, for employers of 100 or more but less than 500 employees.
- July 1, 2013, for employers of 25 or more but less than 100 employees.

Each employer must retain the record of the verification of work authorization for the duration of the worker's employment and for a year after employment has ceased. The verification requirement does not apply to a seasonal temporary worker employed for 90 days or less during a 12-month period.

Complaints. – Any person with a good faith belief that an employer is not complying with the verification requirement can file a complaint with the Commissioner of Labor (Commissioner). The complaint may be on a form prescribed by the Commissioner or may be in any other form that gives the Commissioner sufficient information to proceed with an investigation. A person who knowingly files a false and frivolous complaint is guilty of a Class 2 misdemeanor.

The Commissioner is prohibited from investigating complaints based solely on race, religion, gender, ethnicity, or national origin. The Commissioner may request assistance from the State Bureau of Investigation in investigating any complaint.

If, after an investigation, the Commissioner determines the complaint is not false and frivolous the Commissioner must hold a hearing and, if appropriate, impose civil penalties. If the Commissioner concludes there is a reasonable likelihood that the employee is an unauthorized alien, the Commissioner must notify United States Immigration and Customs Enforcement and local law enforcement agencies.

Penalties. – For a first violation, the Commissioner must order the employer to file a signed sworn affidavit that the employer has requested verification of work authorization through E-Verify. The affidavit must be filed with the Commissioner within three business days after the order is issued. An employer who fails to timely file the required affidavit is subject to a civil penalty of $10,000.

For a second violation, the employer must file the signed sworn affidavit that the employer has requested verification of work authorization through E-Verify. An employer who fails to timely file the required affidavit is subject to a civil penalty of $1,000, regardless of the number of required employee verifications the employer failed to make.

For a third or subsequent violation, the employer must file the signed sworn affidavit that the employer has requested verification of work authorization through E-Verify. An employer who fails to timely file the required affidavit is subject to a civil penalty of $2,000 for each employee verification the employer failed to make.

Counties and Municipalities. – Counties and municipalities are required to register and participate in E-Verify to verify the work authorization of new employees hired to work in the

United States. County and municipal verification of employee work authorizations must be enforced without regard to race, religion, gender, ethnicity, or national origin.

The provisions of this act requiring counties and municipalities to participate in E-Verify became effective October 1, 2011. The remainder of this act becomes effective in accordance with the schedule noted above. (SK)

Protect and Put North Carolina Back to Work

S.L. 2011-287 (HB 709) makes numerous changes to the Workers Compensation Act (Act), and makes changes concerning the appointment and authority of the Industrial Commission. The Act:

- Amends the definition of "medical compensation" to include attendant care services if prescribed by a physician or ordered by the Industrial Commission, and vocational rehabilitation, and defines "suitable employment" as any employment offered to the employee that:
  - Is within the employee's work restrictions before the employee has reached maximum medical improvement, or
  - The employee is capable of performing after reaching maximum medical improvement given the employee's pre-existing physical and mental limitations, vocational skills, education, and experience, and within a 50-mile radius of the employee's residence at the time of the injury, or current residence if the employee had a legitimate reason to relocate since the date of the accident.

  (Applies to claims arising on or after June 24, 2011.)
- Disqualifies an employee from receiving compensation if, in connection with being hired, the employee willfully made a false representation regarding his or her physical condition, the employer relied upon the representation, and there was a causal connection between the representation and the injury or occupational disease for which the employee seeks compensation. (Applies to claims arising on or after June 24, 2011.)
- Amends the settlements of claims brought under the Act to clarify that parties are not prohibited from reaching a separate contemporaneous agreement resolving issues not covered by the Act. (Applies to claims arising on or after June 24, 2011.)
- Provides a procedure for reinstatement of compensation for any reason other than a change in condition, whenever the employer or insurer has admitted the employee's right to compensation or liability has been established. Any challenge to the employee's request for reinstatement must be scheduled on a preemptive basis.
- Deletes the provision permitting an employee to select a physician of his or her own choosing subject to the Industrial Commission approval and requires the employee to show by a preponderance of the evidence that the requested change of treatment or health care provider is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. In making its decision the Commission may disregard or give lesser weight to the opinion of any health care provider not authorized to evaluate, diagnose, or treat the employee before the employee filed the request for a change in treatment or provider. The Act also gives the employee a right to request a second opinion evaluation, and provides that if an employer refuses the request or if the parties are unable to agree on who will perform the examination, the employee may request that the Commission order a second opinion examination. (Applies to claims arising on or after June 24, 2011.)
- Rewrites the law governing access to an employee's medical information to set forth the procedure by which employers, their attorneys, and their insurers can obtain relevant medical information relating to an employee without the employee's prior authorization. (Applies to claims arising on or after June 24, 2011.)

- Requires the Industrial Commission to adopt rules requiring electronic medical billing and payment processes and requiring applicable administrative standards for processing electronic medical bills to comply with Health Insurance Portability and Accountability Act billing procedures.
- Amends the law relating to medical examinations to provide that:
  - The employee must submit to an independent medical examination after an injury and for so long as the employee claims compensation, as requested by the employer or as ordered by the Industrial Commission, by a physician licensed and practicing in North Carolina, regardless of whether the employee's claim has been denied by the employer.
  - Any refusal by the employee immediately suspends the employee's right to compensation and right to prosecute any proceedings under the Act, and the Commission is required to state what the employee should do to end the suspension and reinstate compensation.
  - Any employer is permitted to communicate with an independent medical examiner chosen by the employer, regardless of whether the examiner physically examined the employee.
  - The employer must provide the employee with a copy of any written report of an independent medical examination within ten days of its receipt, together with all supporting documents provided to the examiner.

  (Applies to claims arising on or after June 24, 2011.)
- Amends the rates and duration of compensation for total incapacity to:
  - Place a 500-week limit on the duration of paid for total disability, measured from the date of first disability.
  - Permit an employee to seek extended compensation beyond 500 weeks if the employee (1) has received at least 425 weeks of compensation at the time of the request, and (2) shows by a preponderance of the evidence that the employee has sustained a total loss of wage earning capacity.
  - Permit an employer to seek termination of extended benefits by showing by a preponderance of the evidence that the employee no longer has a total loss of wage-earning capacity.
  - Reduce compensation payable beyond 500 weeks for extended benefits by any Social Security retirement benefits received by the employee.
  - Require an employee who has reached maximum medical improvement and who has one or more scheduled injuries to elect whether to receive compensation under the schedule of injuries rate and period of compensation or under either temporary total disability or temporary partial disability.
  - Provide that an employee may qualify for permanent and total disability only if the employee has one or more of the injuries specified in the Act.
  - Provide that an employee qualified for permanent and total disability will receive compensation for life, unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment, in which event compensation other than medical compensation will be terminated or suspended.

  (Applies to claims arising on or after June 24, 2011.)
- Increases the maximum duration of compensation for partial incapacity from 300 weeks to 500 weeks from the date of injury and provides that any compensation received for total incapacity counts toward this limit. (Applies to claims arising on or after June 24, 2011.)
- Provides that an employee will not receive compensation for so long as the employee refuses "suitable employment" without justification as determined by the Commission, and clarifies that an employer is not prohibited from directly contacting the employee about returning to suitable employment. Requires the Commission to

specify in its order suspending compensation what the employee must do to end the suspension and reinstate compensation.

- Provides requirements for the provision of, payment for, and termination of vocational rehabilitation services. (Applies to claims arising on or after June 24, 2011.)
- Increases maximum burial benefits, and increases weekly benefits payable to dependents when a compensable injury or occupational disease causes the employee's death. (Applies to claims arising on or after June 24, 2011.)
- Reduces the number of commissioners on the Industrial Commission (Commission) from seven to six, and requires legislative confirmation of the Governor's appointments to the Commission. Subjects commissioners and deputy commissioners to the Code of Judicial Conduct, and to the same impeachment provisions applicable to judges.
- Requires the Commission to adopt rules in accordance with the Administrative Procedures Act (APA). Requires that decisions and findings of fact of the Industrial Commission be based upon the preponderance of the evidence in view of the entire record. (Applies to claims arising on or after June 24, 2011.)
- Deletes the statutory exemption of the Industrial Commission from the APA, but exempts the Commission from the APA's contested case provisions. Requires the Commission to readopt all rules currently in effect pursuant to the procedures in the APA, and provides for the expiration of any existing rule not readopted by December 31, 2012. Rules readopted on or before December 31, 2012, remain in effect until becoming effective pursuant to the APA.

This act became effective June 24, 2011, except as otherwise indicated, notwithstanding statutory effective dates for legislative changes in workers compensation benefits. (BP)

No Adult Left Behind

S.L. 2011-327 (SB 166). See **Education.**

2011 Omnibus Labor Law Changes - Agency Bill

S.L. 2011-366 (HB 385) amends the following provisions contained in the Labor Law:

- **Uniform Boiler & Pressure Vessel Act.** – Makes clarifying changes with regard to the types of boilers and pressure vessels to which the act applies and those that are exempt. Also authorizes the Commissioner of Labor to grant exceptions from certain requirements if the exception will not expose the public to unsafe conditions.
- **Amusement Device Safety Act.** – Amends the definition of the term "amusement device" to exclude mopeds, rock walls in a fixed location, zip-lines, funhouses and other walk-through devices with no mechanical components, and playground equipment. The act also clarifies that notice of a planned schedule of operation of an amusement device must be received by the Commissioner of Labor 10 working days before the date of operation.
- **Passenger Tramway Safety Act.** – Clarifies that a registration certificate must be issued annually if the Commissioner of Labor is satisfied the application is sufficient and the device complies with all rules.
- **Occupational Safety and Health Act.** – Reduces the time within which an employee or representative of employees can contest the time fixed in a citation from 20 to 15 working days.
- **Retaliatory Employment Discrimination Act.** – Authorizes the Commissioner of Labor to reopen an investigation for good cause within 30 days of the right-to-sue letter. The act also reduces the time within which an employee may make a written

request to the Commissioner for a right-to-sue letter from 180 to 90 days following the filing of a complaint if the Commissioner has not taken action.

This act became effective June 27, 2011. (KCB)

Governmental Employment

All Furloughs Prohibited Except as Ordered to Balance the Budget/Benefits Protection for Furloughed Personnel

S.L. 2011-145, Sec. 29.18 (HB 200, Sec. 29.18) contains the following requirements applicable to furloughs of public employees paid with State funds:

- Furloughs are prohibited unless ordered by the Governor to balance the State budget or by the Chief Justice or the Legislative Services Officer to balance the judicial or legislative branch budget.
- Furloughed employees who are members of any State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program must be considered in active service during the furlough, must not lose any benefits to which they were entitled prior to the furlough, and must suffer no diminution of retirement average final compensation as a result of being furloughed. Requires the employer to continue to pay both the employer and employee retirement plan contributions as though the employee were in active service.
- Members of the State Health Plan shall remain eligible for coverage under the Plan on the same basis as immediately before the furlough, and the employer shall pay contributions on behalf of the furloughed employee as though the employee were in active service.
- Benefits protections provided by this section are extended to public employees in the judicial and legislative branches.

This section became effective July 1, 2011. (BP)

Monitor Compliance with Freeze on Most Salary Increases

S.L. 2011-145, Sec. 29.19 (HB 200, Sec. 29.19) directs the Office of State Budget and Management and the Office of State Personnel to monitor the compliance of (1) State agencies, departments, and institutions including authorities, boards, and commissions, (2) the judicial branch, and (3) The University of North Carolina and its constituent institutions with provisions imposing a salary freeze on employees in enumerated categories, except in certain cases involving an increase in job duties or responsibilities. The Office of State Budget and Management and the Office of State Personnel are directed to submit quarterly reports to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division.

The Legislative Services Officer is directed to report quarterly to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on compliance with this section.

This section became effective July 1, 2011. (KCB)

Studies

Comprehensive Review for Reform of Public Employee Compensation Plans/Recommendations for Legislation by May 1, 2012

S.L. 2011-145, Sec. 29.20 (HB 200, Sec. 29.20) directs the Legislative Services Commission to commission a study of the current compensation plans of State agencies, departments, institutions, The University of North Carolina, the North Carolina Community Colleges, and local education agencies. The Commission may contract with a consultant to perform the study.

If a qualified consulting firm performs the study, the consultant must report progress to the General Assembly's Fiscal Research and Program Evaluation Divisions every 90 days. The section requires that any findings, recommendations, and any legislative proposals be reported to the 2012 Regular Session of the 2011 General Assembly by May 1, 2012.

All State agencies, departments, institutions, The University of North Carolina, the North Carolina Community Colleges, and local education agencies must provide any information, data, or documents requested by the Fiscal Research and Program Evaluation Divisions. The State Personnel Director, the State Budget Director, the State Controller, and the State Treasurer must dedicate and identify staff for technical assistance to aid in the study.

This section became effective July 1, 2011. (SK)

Vetoed Legislation

Extend Unemployment Insurance Benefits/Continuing Resolution

HB 383. See **Vetoed Legislation.**

Chapter 16
Local Government

Erika Churchill (EC), Brad Krehely (BK), Theresa Matula (TM),
Giles Perry (GSP), Kelly Quick (KQ)

Enacted Legislation

County Administration of Municipal Elections

S.L. 2011-31 (HB 21). See **Constitution and Elections.**

Statewide Email Subscription Lists

S.L. 2011-54 (SB 182) provides that a unit of local government is not obligated to provide copies of its electronic mail distribution lists under the public records law. However, the lists must be available for public inspection either in printed or electronic format, or both. If a unit of local government maintains an email list of individual subscribers, the list may be used only for the following purposes:

- For the purpose to which it was subscribed.
- To notify subscribers of an emergency to the public health or safety; or
- In case of deletion of that list, to notify subscribers of the existence of any similar lists.

This act became effective April 28, 2011. (TM)

Municipal Self-Annexations

S.L. 2011-57 (HB 171) clarifies that a petition for voluntary satellite annexation is not valid if the petition is unsigned, the petition is signed by the city but the city does not own the property it seeks to annex, or the petition is for the annexation of property for which a signature is not required and the property owner objects to the annexation.

In addition, the act clarifies, with respect to voluntary satellite or voluntary contiguous annexation, that a municipality does not have the authority to petition itself for annexation of property it does not own or otherwise have a legal interest in, and that a municipality has no legal interest in a State-maintained street unless it owns the underlying fee.

This act became effective April 28, 2011. (GSP)

Municipal Service District/Streets

S.L. 2011-72 (SB 281) allows certain cities to create a municipal service district for the conversion of private streets to public streets. A city may impose a higher property tax rate on the taxpayers within a municipal service district to pay for the additional services received in that district.

The act applies to cities that meet one of the following population requirements:

- Located primarily in a county with a population of 750,000 or more and also in an adjacent county with a population of 250,000 or more.
- Located primarily in a county with a population of 250,000 and also in a county with a population of 750,000.

The following limitations apply to the creation of a municipal service district as authorized by this act:

- The private road must be non-gated.
- A city must receive a petition requesting the city to establish the district, signed by 60% of the lot owners of the area to be included within the special district.
- A city must be willing to accept the converted streets for perpetual public maintenance.
- The additional tax rate levied in the special district may not exceed 30% of the property tax rate currently imposed in that district in the fiscal year prior to establishment of the district.
- After the private streets have been upgraded to meet public street standards and all costs have been recovered, the district must be abolished.

This act became effective May 12, 2011. (TM)

Level Playing Field/Local Government Competition

S.L. 2011-84 (HB 129) sets parameters for cities providing communications services (cable, video programming, telecommunications, broadband, or high speed internet access) to the public for a fee. A city providing communications services must:

- Comply with all State, local, and federal laws and regulations to which a private company providing the same communications service is subject.
- Establish separate enterprise funds for the communications service and conduct annual audits of the communications service.
- Limit the provision of service to the jurisdictional boundaries of the city.
- Provide nondiscriminatory access of the city's rights-of-way, poles, or conduits to other service providers.
- Remit to its General Fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service.

City-owned communications service providers are prohibited from engaging in any of the following:

- Using the city's authority to require individuals or developments to subscribe to the communications service.
- Pricing the service below the cost of providing the service. The cost of providing the service must include the cost of capital components that would be equal to the cost of capital components a private provider would incur and an amount equal to all taxes a private provider would pay.
- Providing advertisements of the city-owned communications service on public, educational, and government access (PEG) channels of competing providers if the PEG channel is required to be carried on the system of another service provider. The use of funds not allocated to the communications service for advertisement is also prohibited.
- Subsidizing the provision of the communications service with other revenue.

Cities and joint agencies are prohibited from incurring debt, including installment purchase contracts and certificates of participation, for a communications system unless a special election is held, posing the question whether or not the city may offer the communications service.

Cities that choose to repair, improve, sell, or discontinue a city-owned communications service are not required to hold a referendum prior to action.

Cities offering communications service as of January 1, 2011, are exempt from the act provided specific conditions are met.

This act became effective May 21, 2011. (EC)

County Law Enforcement Service District

S.L. 2011-100 (HB 280) changes the requirements for creating a county law enforcement service district. The act increases the county population threshold to over 900,000 (was 500,000) and requires that less than 10% of the population of the county is in an unincorporated area. Both factors are determined according to the most recent federal decennial census. The county must have an interlocal agreement or agreements with a municipality or municipalities for the provision of law enforcement services in the unincorporated area of the county.

This act became effective May 31, 2011. (BK)

Local Annexations Subject to 60% Petition

S.L. 2011-173 (SB 27) suspends, as of June 1, 2011, specified pending involuntary annexations in the municipalities of Kinston, Lexington, Rocky Mount, Wilmington, Asheville, Marvin, Southport, and Fayetteville until completion of a petition to disallow the annexation process. Under the process, if the owners of 60% of the affected parcels submit petitions to deny the annexation, the annexation shall be terminated, and the municipality may not adopt a resolution of consideration to annex the same area for at least 36 months.

This act became effective June 18, 2011. To the extent this act is subject to Section 5 of the federal Voting Rights Act, it becomes effective upon preclearance. (GSP)

Local Annexations Subject to 60% Petition

S.L. 2011-177 (HB 56) suspends, as of June 1, 2011, specified pending involuntary annexations in the municipalities of Kinston, Lexington, Rocky Mount, Wilmington, Asheville, Marvin, and Southport until completion of a petition to disallow the annexation process. In addition, the act applies to a specified completed and effective involuntary annexation in the City of Goldsboro. Under the process, if the owners of 60% of the affected parcels submit petitions to deny the annexation, the annexation shall be terminated, and the municipality may not adopt a resolution of consideration to annex the same area for at least 36 months.

This act became effective June 18, 2011. To the extent this act is subject to Section 5 of the federal Voting Rights Act, it becomes effective upon preclearance. (GSP)

Extend Assessment Refund Period

S.L. 2011-205 (HB 167) extends by five years the authority granted local governments to refund assessments for the financing of a capital project that was assumed by another local government. This act provides for the refund of unused assessments imposed prior to 2012.

This act became effective June 23, 2011. (KQ)

Rural Operating Assistance Program Changes

S.L. 2011-207 (HB 229). See **Transportation**.

Municipal Systems

S.L. 2011-212 (SB 320) provides that for the sale, lease, or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether to sell, lease, or discontinue.

This act becomes effective January 1, 2012. (BK)

Employers and Local Government Must Use E-Verify

S.L. 2011-263 (HB 36). See **Labor and Employment**.

Residential Building Inspections

S.L. 2011-281 (SB 683) limits the authority of counties and cities to inspect residential buildings and structures to situations where there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions exist. The term "reasonable cause" is defined as any of the following:

- There is a history of at least 2 housing ordinance or code violations within the last 12 months.
- A complaint has been filed alleging substandard conditions.
- The inspection department has actual knowledge of an unsafe condition within the building.
- A violation of local codes or ordinances is visible from the outside of the property.

Periodic inspections are permitted as part of a targeted effort within a geographic area. The city or county must not discriminate in its selection of properties and must do all of the following:

- Provide notice to owners and residents in the affected area.
- Hold a public hearing.
- Establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

A city or county may not do any of the following:

- Adopt or enforce an ordinance requiring an owner or manager of rental property to obtain a permit or permission to lease residential real property except under certain circumstances.
- Require the owner to participate in any governmental program as a condition of obtaining a certificate of occupancy.
- Levy a fee or tax on residential rental property that is not also levied against other commercial and residential properties.

A city or county may levy a fee for rental property registration on properties that have been found to be in violation of a local ordinance in the last 12 months.

This act became effective June 23, 2011. (EC)

Clarify Development Moratoria Authority

S.L. 2011-286 (HB 332) specifies that temporary development moratoria adopted by counties and cities may not be imposed for the purpose of developing new or amended zoning and development plans or ordinances as to residential uses.

This act became effective June 24, 2011. (EC)

Attorney Fees/City or County Action Outside Authority

S.L. 2011-299 (HB 687). See **Civil Law and Procedure**.

Out-of-State Law Enforcement/Special Events

S.L. 2011-316 (SB 600) allows the head of any law enforcement agency, in a municipality with a population that exceeds 500,000, to request and enter into temporary intergovernmental law enforcement agreements with out-of-state law enforcement agencies or out-of-state

enforcement officers to aid in enforcing North Carolina laws within the jurisdiction of the requesting municipality. Assistance may include:

- Allowing out-of-state law enforcement officers to work temporarily with officers (including undercover).
- Lending equipment and supplies.

While working with the requesting agency, out-of-state law enforcement officers have the same jurisdiction, powers, rights, privileges and immunities as the officers of the requesting agency. The out-of-state law enforcement officers are subject to the commands of the chief of police for the requesting agency and the chief's chain of command.

This act becomes effective January 1, 2012, and applies to all intergovernmental law enforcement agreements entered into on or after that date, and expires October 1, 2012. (TM)

Downtown Service District Definition

S.L. 2011-322 (SB 118) rewrites the definition of downtown revitalization projects and expands the list of examples of improvements authorized in a municipal service district for downtown revitalization to include public buildings, restrooms, docks, visitor centers, and tourism facilities.

This act became effective June 27, 2011. (TM)

Farms Exempt from City Annexation and Extraterritorial Jurisdiction

S.L. 2011-363 (HB 168) clarifies the definition of "bona fide farm purposes" in the county zoning statutes and lists documents constituting sufficient evidence that a property is used for bona fide farm purposes. The act prohibits the involuntary municipal annexation of property used for bona fide farm purposes without the written consent of the owner, and exempts property used for bona fide farm purposes from municipal extraterritorial planning and zoning jurisdiction.

This act became effective June 27, 2011, and applies to annexations of property used for bona fide farm purposes initiated by municipalities on or after that date, or pending on that date. (GSP)

Zoning of Contributing Structures

S.L. 2011-367 (HB 403) allows the governing board of any municipality to apply its demolition by neglect ordinances to contributing structures located outside the local historic district and within an adjacent central business district. This act applies to any municipality with a population in excess of 100,000, provided the municipality meets both of the following requirements:

- The municipality has designated portions of the central business district and its adjacent historic district as an Urban Progress Zone.
- The municipality is recognized by the State Historic Preservation Office and the United States Department of the Interior as a Certified Local Government in accordance with the National Historic Preservation Act and applicable federal regulations, but is located in a county that has not received the same certification.

This act became effective June 27, 2011. (BK)

Zoning Statute of Limitations/Agricultural District Change

S.L. 2011-384 (HB 806) changes the statute of limitations for actions contesting the validity of a zoning or unified development ordinance.

- A two-month statute of limitations applies to actions contesting the validity of ordinances adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request. The action accrues upon adoption of the ordinance or amendment.
- Except as provided above, other actions contesting the validity of a zoning or unified development ordinance must be brought within one year of the date the party bringing the action first has standing to challenge the ordinance; however, a challenge to an ordinance based on an alleged defect in the adoption process must be brought within three years.

The act specifies that the statute of limitations provisions do not bar a party from raising the invalidity of an ordinance as a defense. The act also does the following:

- Prohibits the adoption of an ordinance that would prohibit single-family detached residential uses on lots greater than 10 acres in zoning districts where more than 50% of the land is in use for agricultural or silvicultural purposes, and prohibits the adoption of an ordinance that would require lots greater than 10 acres to have frontage on a public road or county approved private road, or be served by public water or sewer lines in order to be developed for single-family residential purposes.
- Requires the Legislative Research Commission, in consultation with the North Carolina Home Builders Association and North Carolina Association of County Commissioners, to study the extent to which counties should be able to require that lots exempt from county subdivision regulations must be accessible to emergency services providers.

This act became effective July 1, 2011, but does not apply to litigation pending on that date. (GSP)

Annexation Reform Act of 2011

S.L. 2011-396 (HB 845) revises the laws governing involuntary annexation by municipalities, and makes changes to the annexation by petition process for economically distressed areas. Key changes include:

- **One annexation process for all size municipalities.** The act replaces the prior involuntary annexation statutes for cities less than 5,000 in population, and for cities of 5,000 or more in population, with one new process.
- **Water and sewer required.** The act provides that if a property owner subject to involuntary annexation requests it, the extension of water and sewer service to each lot or parcel is required. The act provides there is no charge to the property owner, if requested during the specified time periods.
- **Petition to deny annexation.** The act provides a new process by which property owners may petition to deny the involuntary annexation. If the property owners of 60% of the parcels subject to involuntary annexation submit petitions to deny annexation, the annexation is stopped and cannot be taken up again for 36 months.
- **Additional notice to property owners.** Several provisions of the act increase notice to property owners of a pending involuntary annexation process, opportunities for water and sewer, and the opportunity to petition to deny the annexation.
- **Appeals modified.** The act expands the grounds for appeal of involuntary annexations, and authorizes attorneys' fees for petitioners.
- **Annexation of distressed areas by petition.** The act modifies existing annexation by petition statutes to require annexation of contiguous distressed (high poverty) areas if the owners of at least 75% of the parcels petition. The act permits annexation of contiguous distressed areas if two-thirds of resident households petition.

This act became effective June 17, 2011. The act applies to pending involuntary annexations for which an annexation ordinance has not been adopted as of the effective date,

and to any new involuntary annexations or annexations by petition initiated after the effective date. To the extent this act is subject to Section 5 of the federal Voting Rights Act, it becomes effective upon preclearance. (GSP)

Chapter 17
Military, Veterans', and Indian Affairs

Tim Hovis (TH), Shawn Parker (SP), Howard Alan Pell (HAP), Patsy Pierce (PP)

Enacted Legislation

Military Service Notation on Licenses

S.L. 2011-35 (HB 159). See **Transportation**.

Advisory Commission on Military Affairs/Modify Membership

S.L. 2011-145, Sec. 9.6A (HB 200, Sec. 9.6A) adds the President of The University of North Carolina and the President of the North Carolina Community College System as nonvoting, ex officio members of the North Carolina Advisory Commission on Military Affairs. With the addition of these two members, the Commission consists of 21 voting members and 17 nonvoting, ex officio members.

This section became effective July 1, 2011. (TH)

Uniform Military and Overseas Voters Act

S.L. 2011-182 (HB 514). See **Constitution and Elections**.

References to Military Organizations/Make Uniform

S.L. 2011-183 (HB 262) provides for uniform references in the General Statutes to federal and State military organizations, including references to "armed forces," "army," "navy," "marine corps," "coast guard," "air force," and "national guard." The act also makes other technical and conforming changes.

Technical changes to the General Statutes addressing benefit years for unemployment benefits became effective July 1, 2011. The remaining sections of the act became effective June 20, 2011. (TH)

Community College Tuition for Members of Military

S.L. 2011-184 (HB 515) includes the cost of textbooks as part of the tuition costs for members of the military who are attending community colleges under the military's Tuition Assistance program, if the student's branch of service permits the addition of textbooks to tuition costs in its tuition assistance program. In order for the cost to be covered, the books must be purchased at the college's bookstore. The community college is allowed to retain the funds attributable to the cost of the textbooks.

This act became effective June 20, 2011. (PP)

Behavioral Health Services for Military

S.L. 2011-185 (SB 597) directs multiple collaborative activities among State and local agencies to address the behavioral health needs of members of the military, veterans, and their

families. The agencies must make personnel and other resources available (to an extent feasible) to the National Guard Family Assistance Centers and are directed to take the following actions:

Department of Crime Control and Public Safety. – The Department must report annually on the activities of the National Guard Family Assistance Center, including information on services provided and number of persons served, to the respective chairs of the Appropriations Subcommittees on Justice and Public Safety and to the House Committee on Homeland Security, Military, and Veterans Affairs.

Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. – The Division is directed to collaborate with military agencies and other appropriate organizations to determine gaps in the care of current and former Armed Forces members who have sustained a traumatic brain injury and to develop recommendations for an accessible, community-based neurobehavioral system of care for those service members. The Division must develop a training curriculum for crisis workers, certain local management entity staff, veteran service officers, and professional advocacy and support groups on strategies to make available referral sources for the types of mental health and substance abuse disorders prevalent among military personnel and their families and report by July 1, 2012, to the respective chairs of the Appropriations Subcommittees on Health and Human Services, and Justice and Public Safety; the Joint Legislative Oversight Committee on Mental Health, Developmental Disability and Substance Abuse Services; and the House Committee on Homeland Security, Military, and Veterans Affairs.

Division of Medical Assistance. – The Division must work together with MedSolutions, Inc. and the appropriate health professionals at the United States Department of Veterans Affairs to ensure that MedSolutions, Inc. is using the appropriate evidence-based diagnostic testing for screening and assessment of traumatic brain injury.

North Carolina Area Health Education Centers (AHEC). – The AHEC Program is instructed to facilitate and continue to provide health education and skills training about the health, mental health, and substance abuse needs of the military and their families for the following groups: (1) health professional students; (2) primary care, mental health, and substance abuse service providers; and (3) hospital administrators. The act directs the AHEC Program to collaborate with multiple listed entities to carry out this requirement.

North Carolina Office of Rural Health and Community Care North Carolina. – In conjunction with other stakeholders, these agencies are directed to work to expand the collocation in primary care practices serving the adult population of licensed health professionals trained in providing mental health and substance abuse services.

Local Management Entities (LMEs). – Each LME must have at least one trained care coordination person on staff to serve as the point of contact for various organizations to ensure that members of the active and reserve components of the Armed Forces of the United States, veterans, and their family members have access to State-funded services when they are not eligible for federally-funded mental health or substance abuse services.

LME staff members who provide screening, triage, or referral services must receive the training developed in accordance with the act.

State and Local Boards of Education. – The act requires local boards of education to collect and report annually to the State Board of Education (SBE) on: (1) the number of students who have an immediate family member who has served in the United States Armed Forces since September 1, 2011; and (2) employees trained, and training offered, in the unique needs of families in the military. The SBE must report annually to the General Assembly on the needs of students whose families are in the military.

The University of North Carolina System. – The University of North Carolina (UNC), along with the North Carolina Community College System Office, is directed to seek and apply for federal grants that may be available to expand mental health and substance abuse training opportunities and increase the number of providers of mental health and substance abuse services. The UNC General Administration and several university-specific programs must collaborate with the National Guard and the United States Department of Veterans Affairs to

conduct research and report to the General Assembly on behavioral health problems facing the military and their families.

The section of this act pertaining to the duties of local boards of education to collect and report information to the State Board of Education became effective October 1, 2011. The remainder of this act became effective June 20, 2011. (SP) (PP)

Various Clarifying Militia Law Amendments

S.L. 2011-195 (HB 250) makes technical and clarifying changes, as recommended by the General Statutes Commission, to the statutes relating to State militias, both unorganized and organized [e.g., North Carolina National Guard]. One of the purposes of the act was to make references to federal and State military organizations as uniform as possible. The Revisor of Statutes is authorized to make substitutions for terms listed in the act, wherever the terms may appear throughout the General Statutes.

This act became effective June 23, 2011. (HAP)

Alcoholic Beverage Control Law/Eastern Band of Cherokee Indians

S.L. 2011-333 (SB 324). See **Alcoholic Beverage Control**.

License Plate Agency Contracts

S.L. 2011-382 (HB 763). See **Transportation**.

Chapter 18
Occupational Boards and Licensing

Karen Cochrane-Brown (KCB), Shawn Parker (SP), Wendy Graft Ray (WGR), Barbara Riley (BR)

Enacted Legislation

Charitable Solicitations/Clarify Exemption

S.L. 2011-27 (SB 51) specifies that any organization with a membership composed solely of 20 or more educational institutions is covered by the existing educational institution exemption from charitable solicitation licensing requirements.

This act became effective July 1, 2011.

Clarify Penalty Unauthorized Practice of Medicine

S.L. 2011-194 (SB 31) rewrites the law pertaining to punishments for the unauthorized practice of medicine to provide:

- Any person practicing without being duly licensed and registered in this State, or any person whose license has become inactive solely for failing to timely file, is guilty of a Class 1 misdemeanor.
- Any out-of-state practitioner practicing without being duly licensed and registered in this State, or any person practicing and falsely representing himself or herself in a manner as being a licensed or registered health care professional, is guilty of a Class I felony.

This act became effective December 1, 2011. (SP)

Real Estate License Law Amendments-Agency Bill

S.L. 2011-217 (HB 386) makes various changes to the Real Estate Licensing Law relating to licensing requirements, regulation of licensees, the Real Estate Recovery Fund, and the regulation of time shares.

This act does the following:

- Removes obsolete statutory references and clarifies several exemptions from licensing requirements.
- Authorizes the Real Estate Commission (Commission) to employ attorneys to assist with the enforcement of the Real Estate Licensing Law, with the approval of the Attorney General. The act deletes a requirement that the Attorney General approve fees for services of outside attorneys.
- Deletes a provision requiring cancellation of a provisional broker's license for the broker's failure to complete required post-licensing education within three years, and instead provides that the broker's license will be placed on inactive status until the requirements are satisfied. All licenses cancelled after April 1, 2009, will be reinstated on inactive status until the Commission's requirements are met. The Commission is authorized to establish requirements for reinstatement by rule.
- Authorizes the Commission to determine an applicant's general fitness, including mental and emotional fitness. All criminal records, credit reports, and reports related to an applicant's mental and emotional fitness are not public records.
- Conforms the Commission's filing requirement to the provision of law that requires the Commission to file an annual and financial report with the Secretary of State, the

Attorney General, the Director of the Budget, and the Joint Legislative Administrative Procedure Oversight Committee.

- Clarifies several actions for which the Commission is authorized to take disciplinary action against a licensee, including the broker's duty to deliver a closing statement to the client. The act also expands the list of crimes for which a licensee can be disciplined, if convicted. A licensee also may be disciplined by the Commission if the licensee holds another professional license and has been disciplined by the other board for actions involving dishonesty or malpractice.
- Requires that the broker's trust or escrow account must be held in a federally insured depository institution that agrees to make the broker's account available to the Commission's representatives.
- Requires that the Commission notify the licensee by mail when financial records are subpoenaed.
- Authorizes the Commission to issue a license to an applicant licensed in a foreign jurisdiction, if the applicant satisfies requirements for licensure in this State or meets such other requirements as the Commission sets by rule.
- Renames the Real Estate Recovery Fund to the Real Estate Education and Recovery Fund (Fund). Authorizes the Commission to use money from the Fund to create and provide educational materials and services to licensees and the public. The Commission may not use funds if the use would reduce the balance of the Fund below $200,000. Deletes the requirement that the judgment debtor be served with a copy of an application for recovery from the Fund. Raises the maximum amount that can be recovered from the Fund per transaction from $25,000 to $50,000. Raises the limit on payments in the aggregate for one licensee from $50,000 to $75,000.
- Clarifies the definition of the term "time share", and clarifies that an instrument concerning a time share that does not burden or pertain to real property located in the State must not be recorded in any office of the register of deeds in this State. Directs the Commission to include information related to time shares in required reports. Makes it a disciplinary offense for a time share broker to fail to maintain a trust or escrow account in a federally insured depository institution that agrees to make its records available to the Commission.
- Directs the Real Estate Commission to adopt rules necessary to implement the act.

The section of this act directing the Real Estate Commission to adopt rules became effective June 23, 2011. The remainder of this act becomes effective January 1, 2012. (WGR)

Clarify Exception/Real Estate Broker Laws

S.L. 2011-236 (SB 507) specifies that officers and employees of a person or business entity, who perform real estate broker acts related to property owned or leased by the person or business entity, are exempt from the requirements of licensure under the laws regulating real estate brokers and salespersons.

This act became effective June 23, 2011.

Confidentiality of Certain State Bar Records

S.L. 2011-267, Sec. 5 (SB 272, Sec. 5) provides that certain State Bar records on disciplinary matters and the Lawyers Assistance Program are not public record within the meaning of Chapter 132 of the General Statutes. This act applies to:

- All documentary materials in the possession of the State Bar or its staff, employees, legal counsel, councilors, and Grievance Committee advisory members concerning any investigation, inquiry, complaint, disability, or disciplinary matter in connection

with the State Bar Grievance Committee, the State Bar's Trust Accounting Supervisory Program, or any audit of an attorney trust account.

- All documentary materials containing or reflecting the deliberations of the Disciplinary Hearing Commission in disciplinary or disability matters.
- All documentary materials in the possession of the State Bar or its staff, employees, legal counsel, and Lawyer Assistance Program volunteers relating in any way to a member's participation or prospective participation in the Lawyer Assistance Program, including, but not limited to, any medical, counseling, substance abuse, or mental health records. The act further provides that neither the State Bar nor any person acting under the authority of the State Bar or of the Lawyer Assistance Program can be required to produce or testify regarding the contents or existence of these documents.

Notwithstanding the confidentiality otherwise afforded by this act, any record containing information collected and compiled by or on behalf of the State Bar that is admitted as evidence in a hearing before the Disciplinary Hearing Commission, or in a court or tribunal, is a public record unless it is admitted into evidence under seal by order of the Disciplinary Hearing Commission, or by the court or tribunal in which the proceeding is held.

This section became effective June 23, 2011.

Amend Engineers and Surveyors Laws

S.L. 2011-304 (HB 616) amends the laws pertaining to the regulation of engineering and land surveying by the State Board of Examiners for Engineers and Surveyors (Board), as follows:

- Requires the Board to review an applicant's record, including disciplinary actions, prior to allowing use of the title, "Professional Engineer, Retired" or "Professional Land Surveyor, Retired."
- Allows delegation of certain duties to the Board's executive director upon a majority, rather than a unanimous, vote of the Board.
- Deletes a requirement that the Board print and distribute a roster of all licensed professional engineers and land surveyors.
- Permits licensure as an engineer or as a land surveyor by comity or endorsement if the person possesses credentials based on verifiable evidence of a standard that the Board deems comparable to North Carolina standards.
- Expands the comity provisions for engineers to those holding a license from any foreign country, not just Canada.
- Expands the comity provisions for land surveyors to those holding a license from the District of Columbia, in addition to any state in the United States.
- Permits the following to be considered as minimum evidence satisfactory to the Board that an applicant is qualified for licensure as a professional engineer:
  - Applicant is a full-time engineering faculty member.
  - Applicant has an earned doctoral degree in engineering.
- Allows graduates of Board-approved programs to sit for the "fundamentals of engineering" exam prior to meeting the experience prerequisites to take the "principles and practice of engineering" exam.
- Allows a student within two semesters of graduation to sit for the applicable "fundamentals" exam in order to be certified as an engineering or land surveying intern.
- Enlarges the Board's disciplinary powers to include refusal to reinstate, or to require additional education of, any engineer or land surveyor who commits or is found legally responsible for certain acts or offenses, violates specified rules or provisions, or has been found professionally incompetent, legally insane, or incompetent.
- Clarifies charges and procedures relating to disciplinary action.

- Deletes limitations on Board jurisdiction over individuals who practice engineering or land surveying for a total of 90 or fewer days in any calendar year.

This act became effective June 26, 2011. (WGR)

Revise Membership/Hearing Aid Fitters Board

S.L. 2011-311 (SB 670) authorizes individuals who are licensed as audiologists by the Board of Examiners for Speech and Language Pathologists and Audiologists, who also possess a doctoral degree in audiology (AuD), to fit or sell hearing aids and to serve as a sponsor to an apprentice without obtaining a license from the North Carolina State Hearing Aid Dealers and Fitters Board. Consistent with this exemption, the act makes the following changes in the licensure chapter for hearing aid dealers and fitters:

- Allows a person to serve as an apprentice under the supervision of a Registered Sponsor - a defined term which includes qualified audiologists and qualified Board licensees.
- Requires a Registered Sponsor that supervises an apprentice to register with the Hearing Aid Dealers and Fitters Board (Board) and pay a registration fee of $150 a year.
- Changes the membership of the Board, removing the appointment of an audiologist recommended by the North Carolina Speech and Hearing Association, and replacing it with the appointment of a member representing the interests of hearing aid consumers. The new appointee must be a person with a hearing loss.

This act became effective June 27, 2011. (SP)

Cash Converters Must Keep Purchase Records

S.L. 2011-325 (SB 144) requires cash converter businesses to keep records of purchases and to make those records available to local law enforcement agencies. The act defines a cash converter as a person "engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business." A cash converter must keep consecutively numbered records of each cash purchase, and the records must be available to law enforcement for inspection and pickup. Each record must contain all of the following information:

- A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.
- The name, residence address, phone number, and date of birth of the seller.
- The date of the purchase.
- The type of identification and the identification number accepted from the seller.
- A description of the seller, including approximate height, weight, sex, and race.
- The purchase price.
- The statement that "THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL."

The act creates an exemption from certain accounting requirements of the Check-Cashing Businesses Act, for licensed check cashers that derive less than 20% of their annual gross revenues from check cashing.

This act became effective December 1, 2011, and applies to purchases by cash converters on or after that date.

Confidentiality/Optometry/Real Estate Closing Interest

S.L. 2011-336 (SB 349) amends the Optometry Practice Act, changes the law concerning the payment of interest earned on accounts maintained by real estate closing settlement agents, and amends laws pertaining to the unauthorized practice of law.

The act authorizes the North Carolina State Board of Examiners in Optometry (Board) to consider investigative information about its licensees as confidential. The act requires licensed optometrists to notify the Board of any felony arrest or indictment, arrest for impaired driving, or arrest or indictment for possession, use, or sale of a controlled substance. Licensed optometrists and candidates for licensure must report medical malpractice judgments and awards to the Board; reporting is also required for settlements of $75,000 or more occurring on or after May 1, 2008. Report of a judgment, award, payment, or settlement must contain specifics relating to the date and location of the underlying incident and the date of the judgment, award, payment, or settlement. The act directs the Board to publish the information for a period of seven years, and to allow the optometrist to publish an explanatory statement that conforms to applicable standards and ethics of the profession.

The act amends the Good Funds Settlement Act to require settlement agents who maintain certain trust or escrow accounts to pay the interest earned on those accounts to the North Carolina State Bar (State Bar) for its Interest on Lawyers Trust Accounts (IOLTA) programs. The State Bar Council is authorized to adopt rules implementing the requirement. These provisions become effective January 1, 2012.

The act amends Chapter 84 of the General Statutes governing Attorneys at Law. The act prohibits a person engaged in the unauthorized practice of law from collecting fees for services performed, and creates a private cause of action for victims damaged by a person who commits the unauthorized practice of law, fraudulently holds himself or herself out as a certified paralegal, or knowingly aids or abets another to commit the unauthorized practice of law. A person proving damages is entitled to recover reasonable attorneys' fees.

The provisions of this act establishing a private cause of action to recover damages and attorneys' fees for the unauthorized practice of law became effective October 1, 2011; other provisions pertaining to the State Bar and regulation of the unauthorized practice of law became effective December 1, 2011, and apply to offenses committed on or after that date. Except as otherwise specified, the remainder of this act became effective June 27, 2011. (SP)

Disputed Earnest Money/Attorneys Deposit

S.L. 2011-350 (SB 487) allows a North Carolina licensed attorney holding disputed funds received while acting as a fiduciary, other than a residential security deposit, to deposit the funds with the clerk of court after notifying the parties claiming ownership and giving them 90 days to resolve the dispute among themselves.

This act became effective October 1, 2011. (WGR)

Encourage Volunteer Health Care Providers

S.L. 2011-355 (SB 743) broadens the applicability of a "military limited volunteer license" by removing the requirement that an applicant be authorized to treat personnel enlisted in the United States armed services, and by changing the name of the license to reflect removal of the military connection. The act retains a requirement that the holder of the license practice only in a clinic specializing in the treatment of indigent patients, and limits practice under the license to not more 30 days per calendar year. The holder of the license is not required to pay an application fee or annual registration fee.

The act recodifies existing provisions regarding issuance of a "retired limited volunteer license", but does not change the requirements, limitations, or applicable fees associated with the

license. The license is issuable to a physician whose license to practice medicine has become inactive. The holder of the license may practice only in clinics specializing in the treatment of indigent patients, and may not receive compensation for those services. The holder of the license must comply with continuing medical education requirements and other rules adopted by the Board, and must pay a $25 annual registration fee.

The act makes conforming changes to laws governing Medicine and Allied Occupations to authorize the issuance of "limited volunteer" and "retired limited volunteer" licenses to physician assistants, and to require applicants for a limited volunteer license to provide the contact information of a supervising physician licensed within this State.

Additionally, the act provides limited liability protections to a non-profit community health referral service for the acts and omissions of a referred physician if the service maintains appropriate liability service.

This act became effective June 27, 2011. (SP)

Improve Enforcement/General Contractor Laws

S.L. 2011-376 (HB 648) requires a person who is exempt from general contractor licensing requirements for the construction or alteration of a building on his or her own land for his or her own use to execute a verified affidavit when applying for a building permit. The affidavit must attest to the following:

- The person is the owner of the property on which the building is being constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation.
- The person will personally superintend and manage all aspects of the construction of the building and that duty will not be delegated to any other person not duly licensed.
- The person will be personally present for all inspections required by the North Carolina State Building Code, unless the plans for the building were drawn and sealed by a licensed architect.

The building inspector or other authority must transmit a copy of the affidavit to the State Licensing Board for General Contractors, who must then verify that the applicant is validly entitled to claim the exemption from licensing requirements. If the Board determines the applicant is not entitled to claim the exemption, the building permit must be revoked.

The act makes conforming changes to laws pertaining to local building inspectors, requiring the presence of the property owner during inspections. The act also amends the contractor licensing law to allow renewal of a certificate of license after a lapse of up to four years (previously two years).

This act became effective June 27, 2011.

Amend Grounds/License Revocation/Bail Bondsman

S.L. 2011-377 (HB 649) amends the law pertaining to the denial, suspension, revocation, or nonrenewal of a professional bail bondsman or runners license, as follows:

- Authorizes the Commissioner to place a licensee on probation.
- Applies the procedures of Chapter 150B, the Administrative Procedures Act.
- Adds the following causes as grounds for disciplinary action:

- Coercive practices.
- Demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.
- Conviction of a crime involving dishonesty or breach of trust.
- Failure to comply with a subpoena of the Commissioner of Insurance or person with similar regulatory authority in another jurisdiction.
- Having any professional license denied, suspended, or revoked in this State or any other jurisdiction for causes substantially similar to those provided for in this State.
- Violating any law governing bail bonding or insurance in this State or any other jurisdiction, or violating any rule of the Financial Industry Regulatory Authority (FINRA).
- Failure to comply with an administrative order or court order imposing a child support obligation after entry of a final judgment or order finding the violation to have been willful.
- Failure to pay State income tax or comply with any administrative or court order directing payment of State income tax after entry of a final judgment or order finding the violation to have been willful.
- Forging another's name to any document related to a bail bond transaction.

The act also makes the following changes:

- Provides that if the defendant's bond is reduced after an agreement has been entered into between a defendant and a surety, the surety is not required to return any portion of the premium to the defendant.
- Amends the law concerning dual license holding, specifying a person may simultaneously hold a professional bondsman's license and a runner's license.
- Provides for the confidentiality of information furnished by insurers under a statute requiring insurers to annually supply a list of all surety bondsmen appointed by the insurer to write bail bonds on the insurer's behalf.
- Provides for the transfer of business by a bail bondsman. A contract transferring a professional bondsman's business to another licensed professional bondsman must include a list of the transferring professional bondsman's pending outstanding bail bond obligations, and be filed with the Commissioner of Insurance. The transferor remains responsible for all outstanding bond obligations until relieved from an individual obligation by a substitution of surety or satisfaction of any final judgment of forfeiture.
- Amends laws pertaining to setting aside forfeiture and relief from final judgment of forfeiture, adding a professional bondsman or a runner acting on behalf of a professional bondsman and bail agents acting on behalf of an insurance company as persons authorized to make a written motion for setting aside forfeiture or for relief from final judgment of forfeiture. The moving party must serve a copy of the motion on both the district attorney and the attorney for the board of education, both of whom also will be provided a copy of the motion by the clerk of superior court. In the case of a motion to set aside forfeiture, if neither the district attorney nor the attorney for the board of education has filed a written objection by the 20th day after a copy of the motion is provided by the clerk, the forfeiture will be set aside.

The provisions of this act pertaining to the setting aside of forfeiture and relief from final judgment of forfeiture became effective December 1, 2011. The remainder of this act became effective June 27, 2011.

Chapter 19
Property, Trusts, and Estates

Karen Cochrane Brown (KCB), Kory Goldsmith (KG), Brad Krehely (BK),
Giles Perry (GSP), Barbara Riley (BR)

Enacted Legislation

Repeal Land Transfer Tax

S.L. 2011-18 (HB 92). See **Finance**.

Cemeteries/Survey Stamp

S.L. 2011-75 (SB 212) provides for the register of deeds to immediately register a written instrument presented for registration and meeting all of the following requirements:

- The instrument is part of a map of a cemetery that was divided into sections based on race.
- The other part of the cemetery map was properly registered with the register of deeds.
- The unregistered part of the map does not have the surveyor's stamp or seal and original signature affixed.

This act became effective May 12, 2011. (BK)

Modify Property Tax Base Exclusions

S.L. 2011-123 (HB 206). See **Finance**.

Commercial Real Estate Broker Lien Act

S.L. 2011-165 (HB 174) provides for a lien on commercial real estate in the amount owed to a real estate broker under a written agreement with the property owner. This act enacts the Commercial Real Estate Broker Lien Act (Act) in Part 4, Article 2, of Chapter 44A of the General Statutes, which provides:

Commercial Real Estate Lien. – A broker may claim a lien on commercial real estate in the amount owed to the broker under a written instrument signed by the owner of commercial real estate or the owner's authorized agent if: (1) the broker has performed under the agreement; (2) the written agreement clearly sets forth the broker's duties; and (3) the agreement sets forth the conditions for earning compensation and the amount of the compensation. The Act also provides for situations in which compensation is to be made in installments, a portion of which will be made after transfer of the real property.

When Lien Attaches. – A lien attaches to the commercial real estate only when the lien claimant files timely notice of the lien with the clerk of superior court of the county in which the real property is located. The notice is timely if filed after the claimant's performance of the written agreement for broker services and before the transfer or conveyance of the property. In the case of a lease or non-freehold interest, the notice of lien must be filed no later than 90 days after the tenant takes possession of the leased property or no later than 60 days following the date set out in the written agreement for subsequent payments. Further, when a notice of lien is filed more than 30 days before the date for settlement or possession as set out in an offer to

purchase or lease which establishes the broker's performance, the lien is available only upon grounds of the owner's breach of the written agreement.

Contents of Lien Notice. – A lien notice must be signed by the lien claimant and must contain an attestation that the information in the notice is true. The lien notice must include all of the following:

- Name of the lien claimant.
- Name of the owner of the commercial real estate.
- Description of the commercial real estate upon which the lien is being claimed.
- Amount for which the lien is claimed and whether the amount is due in installments.
- Grounds for the lien including a reference or a copy of the written agreement.

Filing of Release or Satisfaction of the Lien. – If a condition occurs that would preclude the lien claimant from receiving compensation under the written instrument, the lien claimant must file and provide the owner a written release or satisfaction of the lien. The written release must be filed and served within 30 days after the demand.

Notice of Lien. – A lien claimant must mail notice of the lien to the owner (1) by certified mail, return receipt requested, or (2) by following any service of process provisions in the statutes governing rules of civil procedure. The lien claimant also must file proof of service with the clerk of superior court. A lien is void if the lien claimant fails to file and serve the lien as required.

Enforcing the Lien. – A lien claimant may enforce a lien by filing suit in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant must begin proceedings within 18 months after filing the lien unless the claim is based on an option to purchase the commercial real estate, in which case proceedings must begin within one year. A lender cannot be made a party to any suit to enforce a lien, unless the lender has intentionally caused the non-payment of the commission.

Petition. – A complaint filed under the Act must contain all of the following:

- Statement of the terms of the agreement, or a copy of the written contract or agreement.
- The date the agreement was made.
- Description of the services performed.
- The amount due and unpaid.
- Description of the property subject to the lien.
- Any other facts necessary for a full understanding of the rights of the parties.

The plaintiff must file the action against all parties having an interest of record in the commercial real estate. A foreclosure action to enforce the lien must be brought pursuant to the statutes on possessory liens on personal property. Valid prior recorded liens or mortgages have priority over a lien under this Act.

Lien extinguished for failing to file suit or answer in pending suit within 30 days. – The lien must be extinguished if a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce the lien within 30 days after written demand. Service of the demand must be accomplished by registered or certified mail with return receipt requested, or by personal service. The lien claimant must file proof of properly served written demand with the clerk of superior court.

Satisfaction or release of lien. – If a claim has been paid in full or the lien claimant fails to timely institute a suit to enforce the lien, the lien claimant must acknowledge satisfaction or release of the lien in writing, within 30 days after written demand of the owner.

Costs paid by non-prevailing party. – The costs of any proceeding brought to enforce a lien, including reasonable attorneys' fees and prejudgment interest, is paid by the nonprevailing party or parties.

Discharge of Lien. – Unless an alternative procedure is available and is acceptable to the transferee, a claim of lien may be discharged by:

- The lien claimant, or the lien claimant’s attorney or agent, acknowledging satisfaction of the lien to the clerk of superior court.

- The owner of the property providing the clerk of superior court with an instrument of satisfaction signed by the lien claimant.
- Failure of the lien claimant to enforce the claim of lien.
- Filing with the clerk of superior court the original or certified copy of a judgment showing the action to enforce the claim of lien has been dismissed or finally determined adverse to the claimant.
- Depositing with the clerk funds equal to 125% of the amount of the claim of lien, to be applied to the payment finally determined to be due.
- Depositing with the clerk a corporate security bond in an amount equal to 125% of the amount of the claim of lien and conditioned on the payment of the amount finally determined to be due.
- Failure to file documentation required by statute.

If funds or a bond equal to 125% of the amount of the lien have been deposited with the clerk, the claim of lien will be released, and the lien claimant will have a lien on the funds held by the clerk.

Priority of lien under the Act. – Any claim of lien allowed under Article 2 of Chapter 44A of the General Statutes, Part 1 (Liens of Mechanics, Laborers, and Materialmen Dealing with Owner) or Part 2 (Liens of Mechanics, Laborers, and Materialmen Dealing with One other than Owner) is superior to liens for broker services, and lien claimants are not entitled to participate in any pro rata distributions to claimants.

This act also amends Article 1 of Chapter 93A of the General Statutes (Real Estate Brokers and Salespersons) by adding a new section providing that no action between a broker and a client under an agreement for broker services is valid unless the contract is reduced to writing and signed by the party to be charged.

This act became effective October 1, 2011, and applies to written instruments signed by the owner of commercial real estate, or signed by the owner's duly authorized agent, on or after that date. (BR)

Release of Upset Bid Deposit

S.L. 2011-204 (HB 164) provides for the release of upset bid deposits if completion of a foreclosure sale is stayed pursuant to federal bankruptcy law before expiration of the ten-day upset bid period. This act provides:

- The clerk of superior court must release any deposits held on behalf of an upset bidder, upon receipt of a certified copy of an order or notice from the bankruptcy court indicating that the debtor has filed a bankruptcy petition.
- The trustee or mortgagee who received a cash deposit from the high bidder must release any deposits held on behalf of the high bidder, upon notification of the bankruptcy stay.

This act became effective October 1, 2011. (GSP)

Register of Deeds

S.L. 2011-246 (HB 312) amends the method for recording satisfaction of a security instrument with the register of deeds, clarifies the requirements for electronically registering plats with the register of deeds, and allows the widow or widower of a deceased person to access military discharge documents filed with the register of deeds.

The act provides that a security instrument intended to secure the payment of money or the performance of any other obligation and registered as required by law may be satisfied of record, and thereby discharged and released of record, by recording a satisfaction document or an affidavit of satisfaction, or by a trustee's satisfaction if the security instrument is a deed of trust.

The act also provides that recording requirements for plat size, reproducible form, and evidence of required certifications are met with respect to an electronic document if all of the following conditions are met:

- The register of deeds has authorized the submitter to electronically register the document.
- The plat is submitted by a federal or State governmental unit or instrumentality or by a trusted submitter. "Trusted submitter" is defined as having entered into a memorandum of understanding regarding electronic recording with the register of deeds of that county.
- Evidence of required certification appears on the digitized image of the document.
- If submitted by a trusted submitter, the digitized image contains the submitter's name in a specified form.
- The digitized image conforms to all other applicable laws.

Provisions of this act relating to military discharge documents became effective June 23, 2011. Provisions of this act relating to the electronic registration of plats became effective October 1, 2011, and apply to plats registered on or after that date. The remainder of this act became effective October 1, 2011. (KCB)

Clarify Water and Well Rights/Private Property

S.L. 2011-255 (SB 676). See **Environment and Natural Resources**.

Devisee/Devise/Statutory Construction

S.L. 2011-284 (SB 252) enacts several recommendations of the General Statutes Commission, including applying throughout the General Statutes the definition of "Devisee" found in Chapter 28A of the General Statutes relating to the administration of decedents' estates and to define the term "Devise" consistently with that definition. The law currently defines the term "Devisee" as any person entitled to take real or personal property under the provisions of a valid, probated will. The act makes usage of the terms more uniform throughout the General Statutes, and makes additional technical changes.

This act became effective June 24, 2011. (KCB)

Withdrawing Public Use Dedication

S.L. 2011-289 (HB 507). See **Transportation**.

Register of Deeds/Fees

S.L. 2011-296 (HB 384) establishes two filing fees for instruments filed with the register of deeds office. For registering or filing any deed of trust or mortgage, the fee is $56 for the first 15 pages plus $4 for each additional page or fraction thereof. For registering or filing any other instrument, the fee is $26 for the first 15 pages plus $4 for each additional page or fraction thereof. The act specifies the fee amounts for "subsequent documents", and for documents consisting of multiple instruments. The act also makes a change with regard to the distribution of revenue from the fees.

The act directs the Revenue Laws Study Committee to review the effect of this act and to report its findings to the General Assembly.

This act became effective October 1, 2011, and applies to instruments registered on or after that date. The act expires on July 1, 2013. (KCB)

Deeds of Trust/Modernize Procedures

S.L. 2011-312 (SB 679) makes numerous technical, clarifying, and conforming changes to the statutes pertaining to mortgages and deeds of trust. The act clarifies that a trustee is not a required party in most matters relating to a deed of trust, other than a foreclosure. The act also reorganizes and expands the list of documents that should be indexed by the register of deeds as "subsequent instruments."

Loan Payoffs and the Satisfaction of Deeds of Trust. – The act addresses a wide range of issues that have arisen since the 2005 enactment of the North Carolina Mortgage Satisfaction Act, as follows:

- Revises and updates definitions.
- Permits rescission of a release that has been erroneously recorded.
- Modifies payoff statement statutes to include requests for short-pay statements.
- Permits a settlement agent to require a lender to temporarily suspend a borrower's ability to obtain additional credit in anticipation of a sale or new loan.
- Provides a form for partial releases.
- Permits lenders to declare that certain obligations are no longer secured by a deed of trust.
- Establishes new "life of lien" rules.
- Adds to the list of documents that must be indexed by the register of deeds.
- Provides for the automatic release of property from "ancillary security instruments".

Future Advances and Future Obligations. – The act makes the following changes with regard to laws governing Future Advances and Future Obligations:

- Makes it clear that obligations secured by a future advance deed of trust can be specifically or generally identified, described, or referenced in the deed of trust.
- Addresses treatment of the outstanding balance to the extent it exceeds the maximum principal amount that may be secured by the deed of trust at any one time.
- Clarifies that (1) accrued interest and certain payments made, sums advanced, and expenses incurred by the lender to protect the collateral and the lender's lien position are secured by the deed of trust with a priority as of the date the deed of trust was recorded, and (2) those sums are not included in the calculation of the principal amount that may be secured by the deed of trust at any one time.

Equity Lines of Credit. – The act makes several revisions to the law pertaining to Equity Lines of Credit, including the following:

- Revises and expands definitions, and recodifies the prohibition against prepayment penalties.
- Clarifies that (1) accrued interest and certain payments made, sums advanced, and expenses incurred by the lender to protect the collateral and the lender's lien position are secured by the deed of trust with a priority as of the date the deed of trust was recorded, and (2) those sums are not included in the calculation of the principal amount that may be secured by the deed of trust at any one time.
- Refines procedures for extending the period of time within which future advances can be made.
- Permits the borrower and certain persons acting on the borrower's behalf to request the termination of an equity line of credit.
- Permits the borrower, certain persons acting on the borrower's behalf, the property owner, and certain subordinate lien holders to bar subsequent future advances obtained by the borrower from being secured by an existing deed of trust. The act also provides model forms for that purpose.

This act became effective October 1, 2011. (KCB)

Trusts and Estate Planning Changes

S.L. 2011-339 (SB 407) amends the laws governing trusts, estate planning, and trust companies. The act makes the following changes to the statutes governing trustees and other fiduciaries:

- Clarifies application of the requirement that notice to qualified beneficiaries contain a statement that the qualified beneficiaries have 20 days from the date notice is given to file a proceeding with the clerk of superior court for review of the reasonableness of the trustee's compensation.
- Provides that, after the death of the settlor's spouse, certain trust property will be deemed to have been contributed by the settlor's spouse and not the settlor if the settlor is the beneficiary of any of the following trusts:
  - An irrevocable intervivos marital trust that is treated as a general power of appointment trust.
  - An irrevocable intervivos marital trust that is treated as qualified terminable interest property.
  - An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.
  - Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described above.
- Clarifies that a successor trustee will be vested with the title to property of the former trustee.
- Provides that one of the specific powers of the trustee is, upon termination of the trust, to exercise all of the powers otherwise exercisable by the trustee during the administration of the trust.

The act makes the following changes to the statutes governing corporate trustees:

- Clarifies that a bond is not required for a personal representative that is a licensed trust institution.
- Defines acceptable collateral for a bank to post when the trust department invests in deposits of its own bank.
- Makes a number of changes to the statutes governing Banks Acting in a Fiduciary Capacity to conform to the statutes governing Trust Companies and Interstate Trust Business in Chapter 52 of the General Statutes.

The act makes other changes to conform the statutes to current practice, allows the Commissioner of Banks to permit trust companies to be organized as limited liability companies, and allows the Commissioner to permit private trust companies to conform to Internal Revenue Service regulations.

This act became effective October 1, 2011, and applies to all trusts created before, on, or after that date. (KG)

Revise Probate Code

S.L. 2011-344 (SB 432) revises North Carolina's probate code and implements a number of recommendations from the North Carolina Bar Association's Estate Planning Section. The act (1) amends the jurisdictional and procedural provisions of the probate code and related statutes to provide uniformity in estate matters, (2) defines the jurisdiction of the clerk of superior court consistent with provisions of the Uniform Trust Code, (3) recodifies provisions related to the probate of wills, and (4) updates and amends the procedure for claiming spousal and children's allowances.

This act becomes effective January 1, 2012, and applies to estates of decedents dying on or after that date. (BK)

Memo of Contract/Deeds and Deeds of Trust

S.L. 2011-351 (SB 519) prescribes the form for registering a memorandum for contract to purchase real estate. The act establishes a presumption that where there is a recorded memorandum, the conditions of any contract that is the subject of the memorandum have been complied with or have expired and are no longer enforceable against creditors or purchasers who recorded their interests 60 days after the closing date specified in the memorandum or the date when the conditions of the contract have been performed, whichever occurs first, after taking into account any recorded extension or renewal of the memorandum.

The act eliminates an exception under prior law that allowed deeds or deeds of trust prepared in other states to be registered when the documents did not bear the name of the person or law firm drafting the instrument.

This act became effective June 27, 2011, and applies to memoranda of contracts to purchase real estate recorded prior to and on or after that date. (GSP)

Planned Community and Condominium Act Amendments

S.L. 2011-362 (HB 165) amends the Planned Community Act and the Condominium Act to provide that an association, acting through its executive board, may foreclose a claim of lien under power of sale if the assessment remains unpaid for 90 days or more, and if the executive board votes to commence the proceeding against the specific lot.

The act also amends the Residential Property Disclosure Act to provide as follows:

- The act does not apply to transfers between parties when both parties agree not to complete an owners' association and mandatory covenants disclosure statement.
- The owner of real property must furnish to a purchaser an owners' association and mandatory covenants disclosure statement. The North Carolina Real Estate Commission is directed to develop the disclosure statement, which must include specified elements.
- The owners' association and mandatory covenants disclosure statement must be delivered to the purchaser no later than the time the purchaser makes an offer to purchase the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.
- The owner may discharge the duty to disclose by attaching a report to the owners' association and mandatory covenants disclosure statement. The report may be made by a public agency or by an attorney.
- If the owner discovers a material inaccuracy in the owners' association and mandatory covenants disclosure statement after it has been delivered to the purchaser, the owner must promptly correct the inaccuracy by delivering a corrected disclosure statement.
- A broker or salesman is not responsible for the owner's willful refusal to provide a prospective purchaser with the owners' association and mandatory covenants disclosure statement.

The act requires the North Carolina Real Estate Commission to take the following actions by December 1, 2011:

- Develop and make available a standard disclosure form as enacted by this act.
- Develop and make available for homebuyers a brochure about restrictive covenants. The brochure must include an explanation that unpaid assessments, fines, fees, or charges may result in foreclosure of an owner's property.

The provisions of this act pertaining to disclosure statements become effective January 1, 2012, and apply to real estate transfers or depositions occurring on or after that date. The

remainder of this act became effective June, 27, 2011, and applies to foreclosure actions filed on or after October 1, 2011. (KCB)

Chapter 20
Resolutions

Denise Huntley Adams (DHA)

Joint Resolutions

State of the State Speech

Res. 2011-1 (HJR 50)

Joint Regulatory Reform Committee

Res. 2011-2 (SJR 17)

Elect State Community College Board Members

Res. 2011-3 (SJR 88)

Reappoint Joseph A. Smith Commissioner of Banks

Res. 2011-4 (SJR 369)

General Assembly Meet in Capitol

Res. 2011-5 (HJR 688)

Diabetes Task Force

Res. 2011-6 (HJR 647)

Confirm Edward Finley to Utilities Commission

Res. 2011-7 (SJR 778)

Recall HB 809

Res. 2011-8 (SJR 785)

Adjournment Resolution

Res. 2011-9 (SJR 784)

Adjournment Resolution -2

Res. 2011-10 (HJR 938)

Adjournment Resolution

Res. 2011-11 (SJR 792)

Adjournment Resolution

Res. S.L. 2011-12 (SJR 793)

Chapter 21
Retirement

Karen Cochrane-Brown (KCB), Kory Goldsmith (KG),
Sara Kamprath (SK), Theresa Matula (TM)

Enacted Legislation

House Pensions Committee Duties

S.L. 2011-14 (HB 6) provides that if the House of Representatives does not have a Committee on Pensions and Retirement, but does have a Committee on State Personnel, then all references to the Committee on Pensions and Retirement in Article 14A of Chapter 120 of the General Statutes are construed as referring to the Committee on State Personnel.

This act became effective March 25, 2011. (TM)

Fire and Rescue/Survivor's Benefit

S.L. 2011-92 (SB 244) amends the law pertaining to the Local Governmental Employees Retirement System to provide that if a firefighter or rescue squad worker dies in the line of duty after having obtained 15 years of service, the member's beneficiary is entitled to select the survivor's alternate benefit. The benefit will be computed based on the early retirement formula.

This act became effective July 1, 2011, and applies to beneficiaries of firefighters and rescue squad workers killed in the line of duty on or after that date. (TM)

Retirement Allowance/Remarriage Option

S.L. 2011-208 (HB 263) allows a retired member of the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS) to nominate a new spouse to receive survivor benefits, if all of the following apply:

- The member designated a spouse as a survivor under Option 5 in the TSERS or LGERS.
- The designated spouse predeceased the member.
- The member remarried prior to the enactment of S.L. 2010-72 on July 1, 2010, which made certain technical corrections to the TSERS and LGERS.

The act allows retired members meeting the above criteria to nominate the new spouse to receive survivor benefits, provided the nomination occurs within 90 days of the effective date of this act.

This act became effective June 23, 2011. (SK)

State Treasurer's Investments-Agency Bill

S.L. 2011-211 (HB 318) increases the State Treasurer's investment flexibility to address internal management of public equities and the use of hedge funds in the public equity portfolio, and to increase the alternatives cap. Specifically, this act:

- Allows assets of the Retirement Systems to be invested directly by the State Treasurer in any authorized equity securities for the purpose of approximating the movements of a published market benchmark index.

- Allows each investment manager to invest up to 6.5% of the market value of all invested assets of the Retirement Systems in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded, and invest primarily in authorized investments.
- Increases the cap on the alternative investment allocation of the market value of all invested assets of the Retirement Systems, raising it from 5% to 7.5%. The act also provides that the Retirement Systems' assets may be invested in interests in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded, if the primary purpose is to: (1) invest in private equity (previously public or private equity) or corporate buyout transactions, within or outside the United States; or (2) engage in other strategies not expressly authorized.

This act became effective June 23, 2011. (TM)

State Pension Plan Solvency Reform Act

S.L. 2011-232 (HB 927) increases the minimum creditable service requirement for retirement in the Teachers' and State Employees' Retirement System (TSERS), and the Consolidated Judicial Retirement System (CJRS) from five to ten years for individuals who become members on or after August 1, 2011. The act makes a conforming change to the special separation allowance for law enforcement officers hired on or after August 1, 2011.

The act makes it a Class 1 misdemeanor for a person to improperly receive a decedent's retirement allowance under the TSERS, CJRS, Local Governmental Employees Retirement System, and the Legislative Retirement System.

The penalty for improperly receiving a decedent's retirement allowance became effective December 1, 2011, and applies to acts committed on or after that date. The remainder of this act became effective August 1, 2011. (TM)

Retirement Technical Corrections-Agency Bill

S.L. 2011-294 (HB 376) makes several technical corrections to the statutes governing the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees Retirement System (LGERS). The act makes the following changes applicable to both the TSERS and the LGERS:

- Requires all State and local government agencies to notify either the TSERS or the LGERS if a retiree from either system is reemployed. The notification must be made within 90 days of the end of the month in which the retiree is reemployed. An employer who fails to make a timely notification will be assessed a penalty, which must paid within 90 days of receipt of the notice of penalty.
- Allows a surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, but whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, the option to receive a reduced retirement allowance in lieu of a return of accumulated contributions.
- Makes it clear that if an employee leaves employment due to military service, the employer who reemploys that person must fund any employee pension benefit plan and must allocate the amount of any employer contribution during the period of service. The employer must remit those contributions to the appropriate retirement system.

The act makes the following changes applicable to the TSERS:

- Removes the six-month waiting period for reemployment of a member who has converted from Long-Term Disability to Service Retirement.

- Makes a former employee who is approved to receive disability retirement benefits or disability income benefits, but who is not in receipt of the benefits due to lump-sum payouts of vacation and bonus leave, eligible for State Health Plan benefits on a noncontributory basis, provided the former employee has vested. The same allowance applies for former employees who receive a lump sum payout of sick leave.

The act makes the following changes applicable to the LGERS:

- Amends the definition of "retirement" under the LGERS to mirror the definition of "retirement" under the TSERS.

The provisions of this act related to penalties for failure to notify the appropriate retirement system when a retiree is reemployed became effective July 1, 2009, and apply to penalties assessed on or after that date. The remainder of this act became effective July 1, 2011. (KG)

Local Boards of Education/403(b) Option

S.L. 2011-310 (HB 730) authorizes the Department of the State Treasurer to create a centralized 403(b) retirement annuity plan as an option for employees of local boards of education. The statewide plan will be known as the North Carolina Public School Teachers' and Professional Educators' Investment Plan (Plan).

The act provides for annuity contracts, trust accounts, and/or custodial accounts to be administered by a qualified third-party administrator that will, under written agreement with the Department of State Treasurer, provide custodial, record-keeping, and administrative services. Governance and oversight of the Plan will be performed by the Department of State Treasurer and the Board of Trustees for the North Carolina Supplemental Retirement Plans, who also will determine investment options for the Plan.

This act became effective July 1, 2011.

Local Governmental Employees' Retirement System Law Enforcement Officers' Disability

S.L. 2011-371 (HB 538) provides for a law enforcement officer who is a member of the Local Governmental Employees' Retirement System to be retired by the Board of Trustees on a disability retirement allowance with less than one year of creditable service, if:

- The officer became incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty.
- The officer meets all other requirements for disability retirement benefits.

This act became effective July 1, 2011. (SK)

Chapter 22
State Government

Denise Huntley Adams (DHA), Erika Churchill (EC), Karen Cochrane-Brown (KCB),
Brad Krehely (BK), Theresa Matula (TM), Harrison Moore (HM),
Giles Perry (GSP), Patsy Pierce (PP), Barbara Riley (BR)

Enacted Legislation

Reform Unemployment Insurance Tax Structure/Expedite Analysis

S.L. 2011-10 (SB 99) directs the Department of Commerce to contract with a consultant to conduct an analysis of the State's unemployment insurance tax structure.

This act became effective March 25, 2011. (GSP)

Administrative Procedure Act Rules: Limit Additional Costs

S.L. 2011-13 (SB 22), repealed by S.L. 2011-398, Sec. 61.2 (SB 781, Sec. 61.2), amends the Administrative Procedure Act to prohibit an agency from adopting a rule under certain circumstances, if the rule results in substantial estimated additional costs to persons subject to the rule. The term "substantial estimated additional cost" is defined as an aggregate financial impact of at least $500,000 in a 12-month period.

This act became effective March 25, 2011, and was made applicable to rules published in the North Carolina Register by an agency on or after that date. This act was repealed effective July 25, 2011. (KCB)

Spending Cuts for the Current Fiscal Year

S.L. 2011-15 (SB 109) directs the Director of the Budget to increase General Fund availability for the 2011-2012 fiscal year by the sum of $537,740,799, by:

- Taking all actions necessary to reduce General Fund expenditures for the remainder of the 2010-2011 fiscal year. The grant of authority includes all powers to balance the budget granted the Governor under Article III, Section 5, of the North Carolina Constitution.
- Identifying and not expending funds in non-General Fund accounts for transfer to the General Fund on June 30, 2011.

The act does not apply to funds available to the Judicial Branch or the Legislative Branch.

This act became effective March 25, 2011. (GSP)

Grifton Shad Festival

S.L. 2011-36 (HB 321) adopts the Grifton Shad Festival of North Carolina, held in the Town of Grifton, as the official shad festival of North Carolina.

This act became effective April 12, 2011. (HM)

Official Herring Festival

S.L. 2011-59 (SB 275) adopts the Herring Festival, held in the town of Jamesville, as the official herring festival of North Carolina.

This act became effective April 28, 2011. (EC)

Modify North Carolina General Assembly Police Powers

S.L. 2011-63 (HB 316) expands the jurisdiction of the General Assembly Special Police to grant its officers statewide jurisdiction while (1) performing advance work for continuity of government planning; (2) performing advance work or providing security for caucus meetings; (3) conducting a criminal investigation of a threat against the General Assembly, a member or staff of the General Assembly, or their immediate family; (4) accompanying a member or staff for the purpose of providing executive protection in response to a threat of physical violence; and (5) serving a subpoena issued by the General Assembly or any committee of the General Assembly authorized to issue a subpoena. The act also authorizes the waiver of Legislative Services Commission rules in specified circumstances.

This act became effective May 3, 2011. (BR)

State Shrimp Festival-Sneads Ferry

S.L. 2011-65 (HB 173) adopts the Sneads Ferry Shrimp Festival as the official shrimp festival of North Carolina.

This act became effective May 3, 2011. (BK)

State Health Plan /Appropriations and Transfer II

S.L. 2011-85 (SB 323), as amended by S.L. 2011-96 (HB 578), provides funding for the State Health Plan for Teachers and State Employees for the 2011-2013 fiscal biennium. The act also adjusts contributory coverage, deductibles, coinsurance, and co-payments for the Plan and transfers control and operation of the State Health Plan to the State Treasurer effective January 1, 2012.

Except as otherwise provided in the act, this act became effective May 23, 2011. (TH)

Additional State Health Plan Changes

S.L. 2011-96 (HB 578) amends various provisions of S.L. 2011-85 (SB 323) to delay implementation of certain changes to the State Health Plan for Teachers and State Employees from July 1, 2011, to September 1, 2011. The act also makes changes to comply with the federal Patient Protection and Affordable Care Act and rules related to coverage of individuals under the age of 19 and under the age of 26.

The act grants the Department of State Treasurer immediate access to confidential records of the State Health Plan, and makes changes to various statutes governing the Board of Trustees.

Except as otherwise provided in the act, this act became effective May 26, 2011. (TH)

Transfer General Statutes Commission/Revisor of Statutes to General Assembly

S.L. 2011-97 (HB 306) transfers the General Statutes Commission, the Revisor of Statutes, the responsibility for codification of the General Statutes, and the staff positions supporting these efforts from the Department of Justice to the General Assembly. The act recodifies current responsibilities of the Justice Department, including bill drafting for State agencies and assisting local governments in drafting legislation. It repeals the requirement that the General Statutes Commission adopt rules and amends that authority to allow for the adoption of policies and guidelines applicable to a legislative branch commission. The act clarifies that the General Statutes Commission may annually recommend legislative changes to the General Assembly.

This act became effective June 1, 2011. (BK)

Interim Appropriations Committees/Meetings/Consultation by Governor

S.L. 2011-145, Sec. 6.5 (HB 200, Sec. 6.5) authorizes the Appropriations Committee of the House of Representatives and the Appropriations/Base Budget Committee of the Senate to meet monthly during interim periods between sessions to perform ongoing examination and oversight of State agencies' execution and administration of the budget, including review of agency expenditures, receipts, compliance with State laws governing expenditure of public money, compliance with legislative policies and intent, and the ongoing fiscal stability and integrity of State government. The Committees may produce written reports and recommendations to the General Assembly, and may produce written reports to the Governor if findings during a review have a potential impact on the current budget. Reports to the Governor must contain recommendations for appropriate executive action.

The act directs the Governor to consult with the Appropriations Committees prior to:

- Establishment of permanent State positions in the executive branch, unless authorized in the budget act.
- Expenditures in excess of the total requirements of a purpose of program, as enacted by the General Assembly and as provided by G.S. 143C-6-4 (Budget Adjustments Authorized).
- Extraordinary measures taken under Section 5(3) of Article III of the North Carolina Constitution to affect necessary economies in State expenditures to balance the budget in the event of a revenue shortfall.
- Notwithstanding G.S. 143C-8-7 (when a state agency may begin a capital improvement project) or G.S. 143C-8-12 (university system capital improvement projects from other than General Funds sources), approval of new capital improvement projects funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or a combination of funds for projects not specifically authorized by the General Assembly.

This section became effective July 1, 2011. (BR)

Certain Litigation Expenses to be Paid by Clients

S.L. 2011-145, Sec. 16.4 (HB 200, Sec. 16.4) requires State departments, agencies, and boards to reimburse the Department of Justice for litigation and other costs incurred by the Department for services provided to these entities.

This section became effective July 1, 2011. (PP)

Use of Closed Prison Facilities

S.L. 2011-145, Sec. 18.3 (HB 200, Sec. 18.3) requires the Department of Correction, in conjunction with the closing of a prison facility, to consult with the county or municipality in which the unit is located, with elected State and local officials, and with State and federal agencies about the possibility of converting the unit to other uses. The Department also may consult with any private for profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of a facility, the Department must give priority to converting the unit to other criminal justice use. The State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, federal agencies, or private firms wishing to convert the units to other use. The Department of Correction may consider converting units recommended for closing by changing the units' security custody level, if it would be cost effective.

This section became effective July 1, 2011. (BK)

Creation of Department of Public Safety

S.L. 2011-145, Sec. 19.1 (HB 200, Sec. Sec. 19.1), as amended by S.L. 2011-391, Sec. 43 (HB 22, Sec. 43), consolidates the Department of Correction, the Department of Crime Control and Public Safety, and the Department of Juvenile Justice and Delinquency Prevention into a single new Department of Public Safety.

This section becomes effective January 1, 2012. (GSP)

Access to Register and Code

S.L. 2011-145, Sec. 24.1 (HB 200, Sec. 24.1) cancels free distribution of the North Carolina Register and the North Carolina Administrative Code.

This section became effective July 1, 2011. (PP)

Limit State Abortion Funding/Health Plan/Insurance

S.L. 2011-145, Sec. 29.23 (HB 200, Sec. 29.23) limits the use of State funds for the performance of abortions or for supporting the administration of any governmental health plan or government-offered insurance policy offering abortion, except in instances where (1) the life of the mother would be endangered if the child were to be carried to term or (2) the pregnancy is the result of rape or incest. This section also provides that the State Health Plan must not offer coverage for abortions except as described above.

This section became effective July 1, 2011. (PP)

Adopt Official State Sport

S.L. 2011-187 (SB 322) adopts stock car racing as the official sport of North Carolina.

This act became effective June 21, 2011. (EC)

Repeal Savings Bond Payroll Savings Program.-Agency Bill

S.L. 2011-210 (HB 313) repeals the statutes that authorized the Payroll Savings Plan for State Employees and the statutes that permitted the State Board of Education to authorize any local school administrative unit to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds. The United States Department of Treasury phased out the issuance of paper savings bonds through traditional employer-sponsored payroll savings plans for non-

federal employees on January 1, 2011. Employees can purchase savings bonds and hold them electronically through TreasuryDirect.

This act became effective June 23, 2011. (TM)

State Historic Sites Special Fund

S.L. 2011-213 (SB 340) creates the State Historic Sites Fund (Fund), which is a special, interest-bearing revenue fund containing receipts from the lease or rental of property or facilities, disposition of structures or products of the land, and admissions and fees collected at State Historic Sites. This act applies to individual State Historic Sites owned or under the control of the Division of State Historic Sites, with the exception of the Bentonville Battlefield State Historic Site. Revenues in the Fund may be used for the operation, interpretation, maintenance, preservation, development, and expansion of the individual site where the receipts are generated.

The act requires the Department of Cultural Resources to submit an annual report that includes the source and amounts of all funds credited and the purpose and amount of all expenditures from the Fund. The report must be submitted by September 30 of each year to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division.

This act became effective July 1, 2011. (TM)

NC-Thinks Program Amendments

S.L. 2011-224 (HB 613) makes the following changes to the State Employee Suggestion Program (NC Thinks):

- Provides for the amount of savings generated by suggestions and innovations to be determined after a 12-month period of implementation or, if applicable, no more than 90 days after the one-time savings is determined or the suggestion is approved. Suggestion payments will be paid 90 days after the final one-time savings is determined or the suggestion is approved.
- Clarifies that no monetary award or leave can be awarded through NC-Thinks where specifically disallowed by the terms of the funding source.
- Moves responsibility for the program from the Department of Administration to the Office of State Personnel.
- Changes the allocation of a portion of the 30% distribution guideline by increasing the implementing agency's portion from 10% to 15%, and decreasing the portion going to a fund for State employee education and training from 10% to 5%; the final 10% will remain with the Office of State Personnel to augment funding for the management and administration of the program.

This act became effective July 1, 2011, and applies to employee suggestions made on or after that date. (TM)

State Mineral is Gold

S.L. 2011-233 (SB 129) adopts gold as the official mineral of North Carolina.

This act became effective June 23, 2011. (BR)

Government Reduction Act

S.L. 2011-266 (SB 593) eliminates certain State boards, commissions, and committees that have been inactive, are duplicative, or are not deemed critical. The act also eliminates certain boards, commissions, and committees that have met their statutory requirements. The act directs the Revisor of Statutes to correct citations in the General Statutes and directs the

Office of the Governor, the Legislative Library, and all State agencies to update databases to reflect changes in boards, commissions, and committees.

This act became effective July 1, 2011. (BK)

Reorganization/Legislative Oversight Committees

S.L. 2011-291 (HB 595) changes the membership and duties of several Legislative Oversight Committees.

This act became effective June 24, 2011. (PP)

Expand Duties of Economic Development Oversight Committee

S.L. 2011-292 (HB 24) modifies the Joint Legislative Economic Development Oversight Committee and expands its duties to include global engagement issues. The Committee is renamed the Joint Legislative Economic Development and Global Engagement Oversight Committee, and its charge includes analyzing North Carolina's current international activity in the business, government, and education sectors and identifying barriers to international trade that may be addressed by legislation. The Committee also is directed to collect and analyze data on global business trends, study foreign representation opportunities that could solicit and recruit international business to the State, analyze incentives to encourage small businesses to export goods and services, study ways to position the State as a portal for international trade, and explore opportunities to increase direct foreign investment in the State.

This act became effective June 24, 2011. (BR)

Director and Officer Insurance for Treasurer

S.L. 2011-300 (SB 702) authorizes the State Treasurer to purchase commercial liability insurance to cover the liability of the State Treasurer and boards, board members, employees, and agents of the State Treasurer. The act includes coverage for potential liability related to investments managed by the State Treasurer, and provides that board members and employees of boards are considered State employees for purposes of the Tort Claims Act and statutes pertaining to the defense of State Employees. The act provides that to the extent the State Treasurer purchases liability coverage, the Treasurer is not required to transfer funds to the Office of State Budget and Management to cover any judgment paid by the State in an amount over $150,000.

The act specifies the purchase of liability insurance must not be construed to:

- Waive sovereign immunity or any other defense available to the State Treasurer and its boards, employees, or agents.
- Expand the maximum to be paid by the State.
- Limit the right of the State Treasurer, board member, or employee to a defense by the State.

This act became effective June 24, 2011. (BK)

911 Call Transcripts

S.L. 2011-321 (SB 98) allows public law enforcement agencies to protect the identity of a caller by releasing "911" and other emergency telephone calls received by, or on behalf of, the agency in the form of a written transcript or altered voice reproduction.

This act became effective June 27, 2011. (EC)

Public Contracts/Multiple Award

S.L. 2011-338 (SB 404) requires the Department of Administration to use multiple award scheduling contracts for the purchase of all ground maintenance, construction, communications, and forestry equipment. A multiple award schedule award contract allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers. The intent of multiple award schedule contracts is to evaluate vendors based on a variety of factors, including discounts, total lifecycle costs, and past vendor performance.

The act directs the Department of Administration to issue requests for proposals for multiple award schedule contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment not later than August 31, 2011. Contracts awarded under this act must be for a term not less than three years, with annual product and pricing update periods. Contracts awarded under the act are in addition to any existing term contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment. The act does not limit the Department of Administration from issuing additional term contracts for the purchase of equipment otherwise available through a multiple award schedule contact.

This act became effective June 27, 2011. (BR)

Global TransPark Reform and Loan Repayment

S.L. 2011-340 (SB 409) amends the governance of the North Carolina Global Transpark Authority (Authority) in the following ways:

- Deletes the Authority's ability to exercise its powers independently of the Secretary of Transportation and makes the Authority subject to the direction and supervision of the Secretary of Transportation.
- Provides for members of the Board of Directors to be appointed from specific categories of representation, including the economic development industry, the real estate industry, environmental interests, the logistics industry, the aviation industry, the defense and security industry, and others.
- Removes existing General Assembly appointees and establishes new, staggered four-year terms.

The act makes a number of changes to address the Authority's outstanding loan from the Escheat Fund, making a one-time transfer from the Statewide Reserves to the Escheats Fund as a payment on the loan, and providing that any grants from the Golden L.E.A.F. to the Authority first must be applied to payment of the outstanding Escheats Fund loan. The maturity date of the loan is moved to October 1, 2012 (was October 1, 2011).

This act became effective July 1, 2011. (BK)

Department of Administration/Procurement Modernization.-Agency Bill

S.L. 2011-360 (HB 713) makes the following changes to the State procurement process:

- Requires the Secretary of the Department of Administration to canvass sources of supply and procure all goods required by the State government under competitive bidding or other suitable means.
- Defines goods to include all commodities, supplies, materials, equipment, and other tangible personal property.
- Requires the Secretary to establish procedures to permit State government to join any federal, State, local government entity, or any nonprofit organization in cooperative purchasing plans or agreements.

- Amends the law on acquisition reporting requirements for State entities, requiring that agencies submit to the Secretary, when requested, actual expenditures for all goods and services.
- Defines "contractual services" for the purpose of the statute requiring departments to request assistance from the Office of the Attorney General in negotiating contracts in excess of $100,000, and deletes the Secretary's authority to adopt rules defining contractual services for certain purposes.

This act became effective June 27, 2011. (BR)

Mountain Resources Commission/Staggered Terms

S.L. 2011-372 (HB 567) staggers the terms of the 17-member Mountain Resources Commission. The act provides that Commission members will continue to serve four-year terms once the initial term limits expire. Members cannot serve more than two full terms consecutively, and vacancies will be filled by the original appointing authority.

This act became effective June 27, 2011. (EC)

Transfer Surplus Property to Retirement System

S.L. 2011-373 (HB 596) directs that 25% of the net proceeds from the sale of surplus land with an appraised value below $6 million be paid to the General Fund and that the remaining 75% of the net proceeds be divided between the State agency currently allocated the land (25%) and the Teachers' and State Employees' Retirement System (50%). The act provides that 100% of the net proceeds from the sale of surplus land with an appraised value exceeding $6 million be paid to the General Fund.

For the 2011-2013 fiscal biennium, the provisions of S.L. 2011-145 will supersede the provisions of this act. In fiscal year 2011-2012, any net proceeds from the disposition of State-owned disposal assets that exceed $15 million may be allocated in accordance with this act. In fiscal year 2012-2013, any net proceeds from the disposition of State-owned disposal assets that exceed $25 million may be allocated in accordance with this act.

The provisions of this act amending the General Statutes governing State Lands became effective July 1, 2011, and will expire January 1, 2016. The remainder of this act became effective June 27, 2011. (KCB)

Regulatory Reform Act of 2011

S.L. 2011-398 (SB 781) makes numerous changes to the Administrative Procedure Act (APA) relating to the rulemaking process, the contested case process, and judicial review of agency decisions. The act also makes a number of other changes to laws relating to various environmental policies.

PART I: Rulemaking. – The act the following changes to the APA rulemaking process:

- Makes it clear that when an agency requirement fits the definition of a rule, the requirement may be enforced only if it is adopted in accordance with the APA.
- Codifies regulatory principles that must be followed by agencies when developing and adopting proposed rules.
- Codifies the Rules Modification and Improvement Program for the review of existing rules.
- Prohibits specified agencies from adopting rules for the protection of the environment, if the rules impose standards and limitations that are more restrictive than those imposed by an analogous federal law or rule.
- Amends provisions relating to fiscal notes on proposed rules, as follows:

- Requires the Office of State Budget and Management to certify that regulatory principles have been met.
- Makes failure to prepare a substantial economic impact fiscal note a basis to disapprove a rule.
- Defines the steps for preparing a substantial economic impact fiscal note.
- Requires that the fiscal note identify the two alternatives that were considered by the agency before adopting the rule in question.
- Reduces the threshold for a substantial economic impact from $3 million to $500,000.

PART II: Contested Cases. – The act makes the following changes to the APA relating to contested cases:

- Makes the decision of an Administrative Law Judge (ALJ) the final administrative decision in the contested case. Cases will no longer be returned to the agency for a final decision.
- Modifies the standard of judicial review to conform to the fact that an agency can no longer reverse the decision of an ALJ.
- Makes it clear the court uses the de novo standard of review when reviewing a final decision where the asserted error is based on a constitutional violation, actions in excess of statutory authority or jurisdiction, or unlawful procedure. In reviewing cases where the error asserted is that the decision was unsupported by substantial evidence or was arbitrary and capricious, the court will determine whether the decision is supported by substantial evidence in view of the whole record.
- Directs the Department of Health and Human Services to seek a waiver from the federal government for final decisions of the Office of Administrative Hearings (OAH) in Medicaid cases. Directs the OAH and the Department of Environment and Natural Resources to seek approval from the federal Environmental Protection Agency, allowing OAH to make final decisions in cases involving federal environmental laws.

PART III: Miscellaneous Issues. – The act also makes the following changes:

- Amends the provision of the APA directing an agency to issue a declaratory ruling upon the request of an aggrieved person. The agency has 30 days to grant or deny a request for a ruling. If granted, the agency has an additional 45 days to issue the ruling. Failure to issue the ruling within 45 days is deemed a denial on the merits. Upon judicial review of the denial, the court cannot consider any basis for denial that was not offered to the petitioner in writing.
- Directs every State agency with rulemaking power to compile a list of all of the agency's rules that are mandated by federal law or regulation, and to submit the list to the Joint Regulatory Reform Committee by October 1, 2011. The list also must include any agency rule for which there is an analogous federal law or regulation, with a statement as to whether the agency's rule is more stringent than the federal law or regulation.
- Directs the Joint Regulatory Reform Committee to study the requirements for administrative hearings conducted under Article 3A of the APA.
- Directs OAH to evaluate the use of mediated settlement conferences, develop a plan to expand the use of such conferences, and report to the Joint Regulatory Reform Committee by February 1, 2012.
- Repeals S.L. 2011-13 (SB 22), An Act to Limit New Agency Regulatory Requirements That Result in Substantial Additional Costs.
- Provides that major developments subject to permitting under the Coastal Area Management Act are exempt from the State Environmental Policy Act.
- Provides that certain environmental regulatory permits issued on or after July 1, 2011, are valid for up to eight years.
- Directs the Secretary of Environment and Natural Resources to develop uniform policy for notification of deficiencies and violations with differing notifications based

on the level of potential harm. Directs the Secretary to report to the Legislative Environmental Review Commission by October 1, 2011, and to implement the plan by February 1, 2012.

- Amends the Umstead Act to authorize a person injured by the act to sue for injunctive relief in Wake County Superior Court and directs the court to determine whether the act was violated and if so, enter a judgment to remove the effects of the violation. The court also is authorized to void any contract entered in violation of the act.
- Repeals the enactment of statutes affecting rules adopted by the Department of Labor, the Department of Agriculture and Consumer Services, and the Department of Environment and Natural Resources to avoid any conflict with provisions of this act.

Part I of this act became effective October 1, 2011, and applies to rules adopted on or after that date. Part II of this act becomes effective January 1, 2012, and applies to contested cases commenced on or after that date. Except as otherwise specified, the remainder of this act became effective July 25, 2011. (KCB)

Employment Security Commission/Jobs Reform

S.L. 2011-401 (SB 532) transfers all of the statutory powers, duties, and functions of the Employment Security Commission to the Department of Commerce. The act establishes the Division of Employment Security (Division) within the Department of Commerce and subjects the Division to rulemaking requirements of the Administrative Procedure Act, removing an exemption previously held by the Employment Security Commission. The seven-member Commission is abolished, and the Secretary of Commerce is directed to appoint an Assistant Secretary to oversee the Division. A three-member Board of Review (Board), appointed by the Governor, is authorized to hear appeals arising from the decisions of the Division and to determine the policies and procedures for conducting appeals. The Board is composed of one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public must be a licensed attorney and will serve as chair of the Board. The Board members will each serve four-year terms and will be subject to confirmation by the General Assembly. Two working Sections are created within the Division; the Employment Security Section will administer the employment services functions, and the Employment Insurance Section will administer the unemployment taxation and assessment functions.

The act makes significant clarifications regarding benefit eligibility:

- No individual is eligible for benefits if incarcerated. However, individuals who are in a county jail for a weekend, but are otherwise available for work, are eligible.
- An individual is not penalized for participation in the Trade Jobs for Success initiative.

The act also rewrites the definition of misconduct connected with work to include intentional acts or omissions evidencing disregard of an employer's interest or standards of behavior which the employer has a right to expect or which have been communicated to the employee.

The act also amends the definition of "discharge for misconduct with the work" to include:

- Violating the employer's written alcohol or illegal drug policy.
- Arrest or conviction for an offense involving violence, sex crimes, illegal drugs, or other activities which could negatively affect the employer's business dealings or reputation in the community.
- Any physical violence related to an employee's work for an employer, whether directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.

- Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment.
- Theft in connection with employment.
- Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- Violation of an employer's written absenteeism policy.
- Refusing to perform reasonably assigned work tasks.
- Failure to adequately perform employment duties, as evidenced by no fewer than three written reprimands received in the 12 months immediately preceding the employee's termination.

The act directs that the Board of Review be appointed, with staff assigned by the Department of Commerce, by November 15, 2011. The act directs the Secretary of Commerce to make a detailed written report on the consolidation by June 30, 2012, to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

This act became effective November 1, 2011. (KCB)

Studies

S.L. 2011-145, Sec. 20.2 (HB 200, Sec. 20.2), as amended by S.L. 2011-391, Sec. 45(b) (HB 22, Sec. 45(b)), requires the Legislative Research Commission to study the duties and services of the Human Relations Commission and the Civil Rights Division of the Office of Administrative Hearings to determine if there is unnecessary overlap and duplication of services and to recommend placement of the Commission in an appropriate agency. The Commission is authorized to make an interim report by May 1, 2012.

This section became effective July 1, 2011. (PP)

Program Evaluation Division Studying Administration of State Attractions

S.L. 2011-145, Sec. 22.1 (HB 200, Sec. 22.1) requires the Program Evaluation Division of the General Assembly to study the operations of State attractions (i.e., State Historic Sites, Museums, State Parks, Aquariums) and recommend whether administration of the attractions can be consolidated. The Division must review all sources of revenue generated by the attractions and review daily visitation trends to determine optimal operating schedules. The Division must report its findings by March 30, 2012, to the chairs of the House of Representatives and Senate Appropriations Committees, the chairs of the House of Representatives Appropriations Subcommittee on General Government, the chairs of the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division.

This section became effective July 1, 2011. (TM)

Vetoed Legislation

Balanced Budget Act of 2011

SB 13. See **Vetoed Legislation.**

State Health Plan/Appropriations and Transfer

SB 265. See **Vetoed Legislation**.

Chapter 23
Transportation

Brenda Carter (BC), Giles S. Perry (GSP), Wendy Graf Ray (WGR), Susan L. Sitze (SLS)

Enacted Legislation

North Carolina Turnpike Authority Corridor Selection

S.L. 2011-7 (SB 165) restricts the authority of the North Carolina Turnpike Authority to select transportation corridors for the Triangle Expressway. The segment known as the Triangle Expressway Southeast Extension cannot be located north of an existing protected corridor established by the Department of Transportation, except in the area of Interstate 40 East.

This act became effective March 18, 2011. (BC)

Military Service Notation on Licenses

S.L. 2011-35 (HB 159) requires the Division of Motor Vehicles to develop a military designation for drivers licenses and identification cards for North Carolina residents who are honorably discharged from service in the United States Armed Forces. The license or identification card holder must request the designation, and the applicant must produce a Form DD-214 showing that he or she was honorably discharged.

This act becomes effective when the Division of Motor Vehicles has completed implementation of the Division's Next Generation Secure Driver License System or by July 1, 2012, whichever occurs first, and applies to drivers licenses issued on or after that date. (WGR)

Increase Fine for Speeding/School Zones

S.L. 2011-64 (SB 49) increases the fine for speeding on school property or in areas adjacent to or near a public, private, or parochial school. The offense is an infraction and the fine is increased to $250. Under prior law, the maximum fine was $100.

This act became effective August 25, 2011, and applies to offenses committed on or after that date. (BC)

Modify All Terrain Vehicle Helmet Use Requirements

S.L. 2011-68 (HB 407) amends an existing requirement that a person operating an all-terrain vehicle wear eye protection and a helmet, to apply to the following: (1) all persons operating an all-terrain vehicle on a public street or highway or public vehicular area; and (2) all persons under the age of 18 whether operating on or off of a public street or highway or public vehicular area. The act makes a conforming change to an exception that allowed employees of retail electric suppliers to wear alternative head and eye protection while engaged in power line inspection, so that it now applies only to persons under the age of 18. The act also provides that a person 16 years of age or older, if riding on an ocean beach area where all-terrain vehicles are allowed, is exempt from the eye protection and safety helmet provisions.

This act became effective October 1, 2011, and applies to offenses committed on or after that date. (GSP)

Amend Weight Requirements-Certain Vehicles

S.L. 2011-71 (HB 336) allows the hauling of unhardened ready-mixed concrete in excess of weight limits so long as specified conditions are met, and the vehicle does not operate on an interstate highway or a posted light traffic road, or exceed any posted bridge weight limits.

This act became effective October 1, 2011, and applies to offenses committed on or after that date. (BC)

Electric Vehicle Incentives

S.L. 2011-95 (HB 222) defines plug-in electric vehicles; authorizes plug-in electric vehicles to use high-occupancy vehicle lanes, regardless of the number of passengers in the vehicle; and exempts plug-in electric vehicles from emissions inspection requirements.

This act became effective May 26, 2011. (GSP)

Obtain Blood Sample/Implied-Consent Laws

S.L. 2011-119 (SB 16) makes the following changes to the motor vehicle laws:

- Adds misdemeanor death by vehicle as an offense subject to the State's implied consent laws.
- Provides that a person charged with a violation of certain statutes pertaining to death or injury by vehicle must be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. The act provides that if a breath sample shows an alcohol concentration of .08 or higher, then requesting a blood sample must be in the discretion of a law enforcement officer.
- Provides that when a person charged with a violation of certain statutes pertaining to death or injury by vehicle willfully refuses to provide a blood sample pursuant to the implied consent law, a law enforcement officer with probable cause to believe the offense involved impaired driving or was an alcohol-related offense must seek a warrant to obtain a blood sample. The act provides that failure to obtain a blood sample is not grounds for the dismissal of a charge and is not an appealable issue.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (GSP)

Increase Department of Transportation Privatization

S.L. 2011-145, Sec. 28.9 (HB 200, Sec. 28.9) directs the Department of Transportation to increase the use of contracts to privatize design and engineering work as follows:

- Identify appropriate contracts and direct solicitation to small professional services firms.
- Expand use of multiple contract awards for maintenance and repair projects.
- Increase outsourcing of preliminary engineering projects.

This section became effective July 1, 2011. (WGR)

State Aid to Railroads Transparency

S.L. 2011-145, Sec. 28.12 (HB 200, Sec. 28.12) repeals statutory authorization for the Department of Transportation to use a portion of the funds appropriated for construction under the Transportation Improvement Program for development of economical transit alternatives to highway construction.

This section became effective July 1, 2011. (WGR)

Report, Consultation, and Approval of Rail Projects

S.L. 2011-145, Sec. 28.15 (HB 200, Sec. 28.15) creates new reporting, consultation, and approval requirements for federal and State railroad revitalization projects administered by the Department of Transportation. The Department is subject to the following requirements if the project involves acceptance of federal funds:

- **Report.** – Project details, amount of federal funds and any State match, and annual maintenance and operational costs for the next 25 years, must be reported to the Joint Legislative Transportation Oversight Committee, or to the House Appropriations Subcommittee on Transportation and the Senate Appropriations Subcommittee on Department of Transportation if the General Assembly is in session.
- **Consultation.** – If the State match or the projected maintenance and operational costs exceed $3 million, the Department may not accept the funds prior to consultation with the Joint Legislative Transportation Oversight Committee, or the House Appropriations Subcommittee on Transportation and the Senate Appropriations Subcommittee on Department of Transportation.
- **Approval.** – If the State match or the projected maintenance and operational costs exceed $5 million, the Department may not accept the funds without approval of the project by an act of the General Assembly.

This section became effective July 1, 2011. (WGR)

Study Regional Consolidation of Transit Systems

S.L. 2011-145, Sec. 28.21 (HB 200, Sec. 28.21) directs the Department of Transportation, Public Transportation Division, to study the consolidation of transit systems and the development of regional transit systems with the following goals:

- Providing increased mobility between existing transit systems within and between counties.
- Improving planning and coordination to better meet public demand.
- Maximizing funding.
- Developing centralized professional staff for operational and administrative efficiency.

The Department must report the results of this study to the Joint Legislative Transportation Oversight Committee no later than March 1, 2012.

This section became effective July 1, 2011. (WGR)

Remove Urban Loops from Statute and Allow Department of Transportation to Define and Prioritize Urban Loop Projects

S.L. 2011-145, Sec. 28.34 (HB 200, Sec. 28.34) removes the statutory list of urban loops to be funded by the Highway Trust Fund, and instead provides that the funds be used for urban loops as designated and prioritized by the Department of Transportation. This section also provides that in removing the statutory listing of urban loop projects, it is not the intent of the General Assembly to interfere with the acceleration of the following urban loop projects announced in March 2011: Charlotte I-485 widening; Greensboro Western Loop, Part C (Bryan Boulevard to Battleground Avenue) and Part D (Battleground Avenue to Lawndale Drive); Greensboro Eastern Loop, Part B (US 70 to US 29); and Wilmington US 17 Bypass, Part B (US 74/76 to US 421).

This section became effective July 1, 2011. (GSP)

Cost Efficient Tire Retreads on State Vehicles and School Buses

S.L. 2011-145, Sec. 28.36 (HB 200, Sec. 28.36) enacts statutes requiring State institutions, departments or agencies, and local boards of education to purchase and install tires for State vehicles and school buses that possess original, unaltered, and uncovered tire sidewalls. All contracts for the purchase, repair, or refurbishment of tires must comply with this section.

This section became effective July 1, 2011. (GSP)

Driver Education Reform

S.L. 2011-145, Sec. 28.37 (HB 200, Sec. 28.37) reorganizes and rewrites statutes pertaining to the driver education program organized and administered by the State Superintendent of Public Instruction under the State Board of Education.

This section directs the State Board of Education to report to the Joint Legislative Program Evaluation Oversight Committee by July 15, 2011, on the status of implementing the legislative mandate for a standard curriculum for the driver education program. In addition, the section prohibits the use of State funds in the 2011-2012 school year for any program that does not use the standard curriculum.

This section adds a statutory provision requiring the State Board of Education to establish and implement a strategic plan for the driver education program, which, at a minimum, must include goals and performance indicators. The plan also must outline specific roles and duties of an advisory committee consisting of employees of the Division of Motor Vehicles, the Department of Public Instruction, and other stakeholders in driver education.

The State Board of Education is directed to establish a pilot program to deliver driver education by electronic means and to report on the implementation of the pilot program to the Joint Legislative Program Evaluation Oversight Committee by June 15, 2012. The State Board of Education also is directed to report to the Joint Legislative Education Oversight Committee and the Joint Legislative Program Evaluation Oversight Committee by June 15, 2012, on the most cost-effective method of delivering driver education in the short- and long-term and on the strategic plan adopted by the Board in accordance with this section.

This section became effective July 1, 2011. (WGR)

Laura's Law

S.L. 2011-191 (HB 49) makes changes in the sentencing of Driving While Impaired (DWI) offenders.

The act creates a new Aggravated Level One punishment for DWI offenders with three or more grossly aggravating factors. Punishment at this level allows the imposition of a fine up to $10,000 and a term of imprisonment of 12 months to 36 months. Unlike other levels of DWI sentencing, a defendant will not be eligible for parole on any term of active sentence given under Aggravated Level One punishment. However, the defendant will be released four months prior to the maximum imposed sentence for a period of supervision that will include continuous alcohol monitoring. The term of imprisonment may be suspended if a special condition of probation is imposed requiring the defendant to serve 120 days and to comply with continuous alcohol monitoring for at least 120 days.

An additional consequence of sentencing at the Aggravated Level One punishment level is a permanent license revocation that allows the offender to petition for conditional restoration of the license after three years. If the license is restored, the offender must have an ignition interlock system installed on the vehicle for a period of seven years after the restoration.

The act makes additional changes to DWI sentencing as follows:

- Removes the current limitation of 60 days on the use of continuous alcohol monitoring and allows its use for the full term of probation.
- Removes the current restriction that limits the total cost to the offender for continuous alcohol monitoring to $1,000.
- Removes a provision that allowed the court to find that a defendant should not be required to pay the costs of continuous alcohol monitoring, and to use that finding as a basis for not imposing the requirement unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agreed to pay the cost of the system.
- Imposes an additional court cost of $100 on all persons convicted of a driving while impaired offense.
- Authorizes, but does not require, a judicial official authorizing pre-trial release for a person charged with an offense involving impaired driving to require the person to comply with continuous alcohol monitoring as a condition of pre-trial release if the person has a prior conviction of an offense involving impaired driving that occurred within seven years.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (SLS)

Amend Weight Limits for Farm Products

S.L. 2011-200 (HB 468) allows an exemption from vehicle weight limits for a person hauling live poultry from the farm where the live poultry is raised to any processing facility within 150 miles of that farm.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (BC)

Alternative Fuel Vehicle Incentives/Add Dedicated Natural Gas and Fuel Cell Electric Vehicles

S.L. 2011-206 (SB 194) was enacted as an addition to S.L. 2011-95 (HB 222), which authorized plug-in electric vehicles to use high-occupancy vehicle (HOV) lanes and exempted them from the emissions inspection requirement. This act defines dedicated natural gas vehicle and fuel cell electric vehicle and authorizes those vehicles to use HOV lanes, as well. The act also exempts fuel cell electric vehicles from the emissions inspection requirement.

This act became effective June 23, 2011. (WGR)

Rural Operating Assistance Program Changes

S.L. 2011-207 (HB 229) allows a public transportation authority or regional public transportation authority to apply for elderly and disabled transportation and assistance funds on behalf of the counties that the public transportation authority or regional public transportation authority serves.

This act became effective June 23, 2011. (BC)

Checking Station Pattern Selection

S.L. 2011-216 (HB 381) precludes the designation of a particular type of vehicle as part of the policy or plan used to conduct a checking station. The act provides an exception that allows commercial vehicles to be designated in a pattern.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (GSP)

Terminal Rental Adjustment Clauses

S.L. 2011-223 (SB 590) provides that a lease transaction does not create a sale or security interest in a motor vehicle or trailer, merely because the lease contains a terminal rental adjustment clause that provides that the rental price is permitted or required to be adjusted up or down by reference to the amount of money realized upon the sale or other disposition of the motor vehicle or trailer.

This act became effective June 23, 2011. (BC)

Commercial Drivers License/Hazardous Materials Endorsement Expiration

S.L. 2011-228 (HB 661) requires that hazardous materials endorsements for a commercial drivers license (CDL) be renewed for a period of five years or less so that individuals subject to a federally required screening may receive the screening and be authorized to renew the "H" or "X" endorsement to transport hazardous materials. A CDL that contains an "H" or "X" endorsement will expire on the date of expiration of the licensee's threat assessment, and the endorsements will expire when the commercial drivers license expires. An exception applies for CDL licensees who are certified school bus drivers with an "S" endorsement.

This act becomes effective July 1, 2012, and applies to endorsements issued for commercial drivers licenses on or after that date. (BC)

Transportation Map Corridors/Condemnation

S.L. 2011-242 (SB 214) amends the State's Transportation Corridor Official Map Act to require that the Secretary of Transportation, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, be notified within ten days of all submittals for corridor map determination. No application for building permit issuance or subdivision plat approval may be delayed for more than three years from the date of its original submittal to the appropriate local jurisdiction. The act establishes requirements for submittals for corridor map determination, and provides that if the impact of an adopted corridor on a property submitted for corridor map determination is still being reviewed after the three-year period, the entity that adopted the transportation corridor official map must issue approval for an otherwise eligible request or initiate acquisition proceedings on the affected properties. If the entity that adopted the transportation corridor official map fails to act within the three-year time limit, the applicant may treat the real property as unencumbered and free of any restriction on sale, transfer, or use. The act provides that a submittal for corridor map determination is not an application for building permit issuance or subdivision plat approval.

This act became effective December 1, 2011, and applies to all transportation corridor official maps filed on or after that date. (GSP)

Household Goods Carriers/Identification Markings

S.L. 2011-244 (HB 311) requires that motor carriers of household goods mark or identify their vehicles with the motor carrier's name or trade name and the North Carolina number assigned to the carrier by the North Carolina Utilities Commission. Violation of these provisions is a Class 3 misdemeanor punished by a fine of not more than $500 for the first offense and not more than $2,000 for any subsequent offense. The Utilities Commission may assess a civil

penalty not in excess of $5,000 for the violation. The provisions do not apply to carriers engaged in interstate commerce only.

The act also makes it unlawful for a person not certified by the Utilities Commission as a motor carrier of household goods to advertise or otherwise represent that the person is authorized to engage in the transportation of household goods for compensation in this State. Violation of these provisions is a Class 3 misdemeanor punished by a fine of not more than $500 for the first offense and not more than $2,000 for any subsequent offense. The Utilities Commission may assess a civil penalty not in excess of $5,000 for the violation.

This act became effective October 1, 2011. (BC)

Run and You're Done

S.L. 2011-271 (HB 427) provides for the seizure, forfeiture, and sale of motor vehicles used by defendants in cases of felony speeding to elude arrest.

The act requires the sheriff to hold the vehicle pending trial, unless the vehicle owner posts bond for an amount double the value of the property or receives a pretrial determination that he or she is an innocent owner. If the defendant is acquitted or the charge is dismissed, the vehicle is returned to the owner.

If the defendant is convicted of felony speeding to elude arrest, the court must order a sale of the vehicle at public auction unless:

- The court, on petition by a lienholder, allows reclamation of the vehicle by the lienholder.
- The court determines all of the following:
  - The defendant was an immediate member of the owner's family at the time of the offense.
  - The defendant had no previous felony or misdemeanor convictions at the time of the offense and had no previous or pending violations of any provision in Chapter 20 of the General Statutes for the three years previous to the time of the offense.
  - The defendant was under the age of 19 at the time of the offense.
- The court determines that the owner is an innocent owner.

If the vehicle is sold at public auction, the sheriff may deduct from the proceeds the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale. The sheriff then must pay all liens, and any remaining proceeds must be paid to the county school fund.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (SLS)

Withdrawing Public Use Dedication

S.L. 2011-289 (HB 507) allows a property owners association that owns subdivision streets located outside an incorporated municipality to file, in the office of the register of deeds in the county where the streets are located, a declaration withdrawing any dedication to public use or withdrawing an offer of dedication to public use of the streets and declaring the streets to be private. A declaration of withdrawal requires the signature of the clerk to the board of county commissioners attesting to the board's adoption of a resolution approving the declaration. The act applies if the subdivision within which the streets exist is located entirely outside the corporate limits of any municipality and bounded on the east by the Atlantic Ocean, the subdivision was created by a plat recorded at least 30 years prior to the recording of the declaration of withdrawal, and other specified conditions are met.

This act became effective June 24, 2011. (BC)

Clarify Motor Vehicle Licensing Law

S.L. 2011-290 (SB 438) makes the following changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law:

- Amends an exception to the law requiring a licensing course for those applying for a used motor vehicle dealer license, making the course requirement not applicable to an applicant who holds a license as a new motor vehicle dealer and operates from an established showroom 20 miles or less from the established showroom for which the applicant seeks the used motor vehicle dealer license.
- Requires an applicant for a license under the dealers and manufacturers law to submit a certification that the applicant is familiar, and intends to comply, with the licensing law and other North Carolina laws governing the conduct and operation of the business for which the license is sought.
- Authorizes any party to a franchise agreement (dealer, manufacturer, factory branch, distributor, distributor branch) to file a petition before the Commissioner of Motor Vehicles for resolution of a dispute related to the franchise or franchise-related form agreement. This does not preclude any other form of recourse, and decisions are reviewable pursuant to the Administrative Procedures Act.
- Amends the provision requiring written notice to a dealer before the manufacturer charges the dealer's account for certain merchandise, tools, or equipment. The act requires notice for any charges totaling more than $5,000. If the dealer disputes the charges, no payment is required unless and until a final judgment is rendered.
- Amends the provision that provides for notice by a dealer of proposed transfer, sale, assignment, relocation of a dealership, and opportunity for the manufacturer to object. The act specifies that the provision also applies to a dealer's proposed change in use of an existing facility to provide for the sales or service of additional line-makes of new motor vehicles.
- Amends a provision regarding payment of fair market value for a franchise upon termination, cancellation, or nonrenewal. Prior law based the amount on the value of the franchise on the day 12 months prior to the notice of termination. This act changes the "look back" date to the day 18 months prior to the notice of termination.
- Expands the statutory provision requiring manufacturers to allocate vehicles to franchised dealers fairly and equitably. The act requires the manufacturer to consider each dealer's historical selling patterns, and prohibits the willful or malicious use of a vehicle allocation process to force a dealer to close, sell, relocate, or renovate a franchise, or to cause the dealer financial distress.
- Amends a provision prohibiting a manufacturer from coercing a dealer to purchase or lease signs upon unreasonable or onerous conditions, also to prohibit a manufacturer from coercing a dealer to erect or relocate signs.
- Prohibits a manufacturer from requiring or coercing a dealer to change the principal operator, general manager, or any other manager or supervisor employed by the dealer.
- Amends an existing law regarding compensation paid by manufacturers to dealers for parts, work, and service in connection with warranty service. The act provides for an optional rate calculation based on actual retail invoices submitted by the dealer. The act also prohibits a manufacturer from denying a dealer the right to return unsold parts and accessories, if the items were not specifically ordered by the dealer and have not been sold after 15 months.
- Strengthens provisions that protect customer data maintained by dealers. Prohibits manufacturers from requesting the data except under limited circumstances.

The provision of this act that changes the look back day for determining fair market value upon termination of a franchise becomes effective January 1, 2014. The remainder of the act became effective June 24, 2011. (WGR)

Clarify Motor Vehicle Laws

S.L. 2011-318 (SB 581) makes the following changes to the motor vehicle laws:

- Clarifies the law concerning release of a security interest in a motor vehicle when the certificate of title is in the possession of the secured party. The act requires that release of the security interest be executed within 10 days after demand or 30 days from the date of satisfaction, whichever occurs earlier.
- Allows an officer, sales representative, or other employee of a franchised motor vehicle dealer, or an immediate family of any of those persons, to operate a motor vehicle displaying a dealer license plate.

This act became effective August 1, 2011, and applies to offenses committed and security interests satisfied on or after that date. (GSP)

Driving While Impaired/Custodial Interrogation Amendments

S.L. 2011-329, Sec. 1 (SB 241, Sec. 1) amends the Driving While Impaired (DWI) sentencing laws to provide that an offender will be sentenced at the Level One punishment level if, at the time of the offense, an occupant of the vehicle is (1) a child under the age of 18, (2) a person with the mental development of a child under the age of 18, or (3) a person with a physical disability preventing unaided exit from the vehicle, then the offender.

See **Courts, Justice, and Corrections** for the summary of Section 2 of this legislation.

This section became effective December 1, 2011, and applies to offenses committed on or after that date. (SLS)

Single Trip Permits/Modular Homes

S.L. 2011-358 (SB 771) provides for the issuance of single trip permits by the Department of Transportation for the transport and delivery of 16-foot-wide manufactured and modular homes. The Department is directed to adopt rules concerning the days allowed for transport and delivery, times of day transport or delivery may occur, the display and use of banners and escort vehicles for public safety purposes, and any other reasonable rules necessary to promote public safety and commerce.

This act became effective October 1, 2011. (BC)

Motorcycle Safety Act

S.L. 2011-361 (HB 113) creates mandatory minimum fines for violation of an existing motor vehicle law requiring drivers to check for safety and then signal before making certain movements. An unsafe movement violation that causes a motorcycle operator to change or leave a travel lane requires payment of a fine not less than $200, and a violation that results in a crash that causes property damage or personal injury to a motorcycle operator or passenger requires payment of a fine not less than $500.

This act became effective December 1, 2011, and applies to offenses committed on or after that date. (WGR)

Ignition Interlock Systems/Record Checks

S.L. 2011-381 (HB 761) makes the following changes to the motor vehicle laws:

- Creates a Class 1 misdemeanor for tampering with, circumventing, or attempting to circumvent an ignition interlock device for the purpose of avoiding or altering testing

on the device for operation of the vehicle, or testing results in the process of being received from the device.
- Removes the requirement that certain drivers licenses have different colored borders.
- Adds special identification cards to the statute providing for a Class 2 misdemeanor for the fraudulent use, possession, or sale of a drivers license or permit.
- Authorizes the Department of Motor Vehicles to do criminal history record checks on any applicant for restoration of a revoked driver's license.

This act became effective December 1, 2011. The provisions authorizing criminal penalties apply to offenses committed on or after that date, and the change in colored borders on drivers licenses applies to licenses issued on or after that date. (SLS)

License Plate Agency Contracts

S.L. 2011-382 (HB 763) directs the Joint Legislative Program Evaluation Oversight Committee to include in its 2011-2012 Work Plan a study to evaluate the Division of Motor Vehicles' Commission Contract for the Issuance of Plates and Certificates program. The act directs the Commissioner of Motor Vehicles not to cancel or amend any commission contracts for any reason other than malfeasance, misfeasance, or nonfeasance of the commission contractor until the study required by this act is complete and final recommendations have been acted upon by the Joint Legislative Program Evaluation Oversight Committee. The act authorizes the Division to issue tags from an office at Fort Bragg, and to operate commission contract agent offices at military installations around the State.

This act became effective June 27, 2011. (GSP)

Modify Graduated Licensing Requirements

S.L. 2011-385 (SB 636), as amended by S.L. 2011-412, Sec. 3.2 (HB 335, Sec. 3.2), makes changes to the requirements for graduated drivers licenses as follows:

- Makes it clear that the holder of a Level 2 limited provisional license may drive before 5:00 a.m. and after 9:00 p.m. without supervision only when driving directly to or from work or service as a volunteer fire, rescue, or Emergency Medical Services member. This provision became effective October 1, 2011, and applies to persons issued a limited provisional license on or after that date.
- Adds additional requirements for obtaining a Level 2 limited provisional license. The driver must have completed a driving log detailing at least 60 hours of driving, with no more than 10 hours of driving per week counting toward the 60 hours. At least 10 hours of the driving must occur at night. The driving log must be signed by the supervising driver and submitted to the Division of Motor Vehicles (DMV).
- Adds additional requirements for obtaining a Level 3 full provisional license. The driver must have completed a driving log detailing at least 12 hours of driving, at least 6 of which must be at night. The supervising driver must sign the log for any hours driven during a time when supervision is required.
- If the DMV has cause to believe a driving log has been falsified, the driver must complete a new driving log and is not eligible to progress to the next level of license for six months. This provision becomes effective January 1, 2012, and applies to persons issued a limited learner's permit or a limited provisional license on or after that date.

This act also creates an immediate civil revocation of provisional licenses for criminal moving violations. A law enforcement officer must execute a revocation report and take the provisional licensee before a judicial official for an initial appearance. A judicial official who finds probable cause to believe the licensee has committed a criminal violation must enter an order revoking the permit or license for a period of 30 days. The revocation order must clearly state the

final day of the revocation period. The licensee is not required to surrender the permit or license, but is not authorized to drive at any time for any purpose during the revocation period and is not eligible for a limited driving privilege. No drivers license points or insurance surcharges are assessed for the revocation. This provision does not apply to implied consent offenses, becomes effective January 1, 2012, and applies to offenses committed on or after that date.

The act directs the DMV to study the issue of teen driving and the effectiveness of the provisions of this act, and report its findings to the Joint Legislative Transportation Oversight Committee by February 1, 2014.

Except as otherwise noted in this summary, this act became effective October 1, 2011. (SLS)

Authorize Various Special Plates

S.L. 2011-392 (HB 289) authorizes the Division of Motor Vehicles to issue various special registration plates, and provides for the expiration of special registration plates on July 1 of the second calendar year following the year in which the special plate was authorized, if the number of required applications for the authorized special plate has not been received by the Division. For plates authorized prior to July 1, 2011, the required number of applications must be received by the Division on or before July 1, 2013. The act expands the number of "full-color" special license plates that are not required to be a "First in Flight" plate with the standard background; however, beginning July 1, 2015, when an owner registers a vehicle or renews registration, the Division will be required to send the owner a replacement plate on the First in Flight background.

The Division is directed to develop, in consultation with the State Highway Patrol and the Department of Correction, a standardized format for special license plates which allows for the license plate number to be easily read by the human eye and by cameras installed along roadways as part of tolling and speed enforcement. The act directs the Department of Crime Control and Public Safety and the Department of Transportation to study whether, for purposes of effective law enforcement, full-color special license plates should continue to be authorized or to be phased out, with all special license plates on the First in Flight background. The agencies are to report their findings and make recommendations to the Joint Legislative Transportation Oversight Committee on or before the convening of the 2012 Regular Session.

The phase-out of the full-color plates becomes effective July 1, 2015. The provisions relating to the expiration of special license plates that have not obtained the required 300 applications became effective July 1, 2011. The remainder of the act became effective June 30, 2011. (BC)

Selective Vegetation Removal/State Highways

S.L. 2011-397 (SB 183) establishes statutory standards for selective vegetation removal within the rights-of-way of the State highway system, and requires the owner of an outdoor advertising sign or the owner of a business facility to obtain a written permit from the Department of Transportation (DOT) for selective vegetation cutting, thinning, pruning, or removal. If the application for the permit is for a site located within the corporate limits of a municipality, the municipality may be given 30 days to review and provide comments on the application. An applicant may appeal a decision by DOT pertaining to the denial or conditioning of a permit. Permits are valid for a period of one year. For outdoor advertising, vegetation cut or removal, limits are restricted to a maximum selective vegetation cut or removal zone for each sign face.

The substantive provisions of this act became effective September 1, 2011, and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date. (BC)

Chapter 24
Utilities

Heather Fennell (HF), Steve Rose (SR)

Enacted Legislation

Requirements for Mineral Oil Spills

S.L. 2011-38 (HB 103). See **Environment and Natural Resources**.

Communications Regulatory Reform

S.L. 2011-52 (SB 343) allows local telephone providers open to competition to elect to participate in a new alternative form of regulation. This new form of regulation differs from the existing alternative form of regulation in the following ways:

- The provider will no longer have carrier of last resort responsibilities.
- The provider will not be eligible to receive funds from a State fund that may be established to support universal service.
- The provider will not be required to provide stand-alone basic service to rural customers at rates comparable to rates charged to urban customers.

This act became effective April 26, 2011. (HF)

Promote Electricity Demand Reduction

S.L. 2011-55 (SB 75). See **Energy**.

Level Playing Field/Local Government Competition

S.L. 2011-84 (HB 129). See **Local Government**.

Prepaid Wireless/Point of Sale Collection

S.L. 2011-122 (HB 571) provides for collection of the 911 service charge on prepaid wireless service at the point of retail sale. The 911 service charge for prepaid wireless is the same as the monthly charge for 911 service imposed on all other phone subscribers. The 911 fee is 70¢, or a lower amount set by the 911 Board. The fee as of July 1, 2011, is 60¢. The Department of Revenue will collect the 911 service charge from the retailers and remit the charges collected to the 911 Board.

This act becomes effective July 1, 2013. (HF)

Utilities Commission/Terms of Commissioners

S.L. 2011-145, Sec. 14.8A (HB 200, Sec. 14.8A) reduces the term of the Commissioners of the Utilities Commission to six years from eight years.

This section becomes effective January 1, 2012. (HF)

Household Goods Carriers/Identification Markings

S.L. 2011-244 (HB 311). See **Transportation**.

Individually Metered Units/Tenant Charged

S.L. 2011-252 (SB 533) authorizes the Utilities Commission to adopt procedures allowing lessors of residential buildings to charge the actual cost of providing electric service to individual tenants in a unit, where the lessor has separate leases for each tenant in an individual unit. The cost of electric service may be charged to tenants, but failure to pay for the electric service may not be used as a basis for terminating the lease.

This act became effective October 1, 2011. (SR)

Chapter 25
Vetoed Legislation

Drupti Chauhan (DC), Erika Churchill (EC), Heather Fennell (HF),
Tim Hovis (TH), Jeff Hudson (JH), Amy Jo Johnson (AJ),
Jennifer Mundt (JM), Bill Patterson (BP)

Protect Health Care Freedom

HB 2 would have prohibited any law or rule requiring a person to provide for health care services or medical treatments for that person, and any law or rule requiring a person to participate, contract with, or enroll in a public or private insurance plan or health care system. Health care services and medical treatments would not include drug testing and screening, and communicable disease controls. The bill specifically excluded persons in prison or jail, and those under probation, parole, or post-release supervision.

According to declarations in the bill, HB 2 would not have expanded, limited, or otherwise modified the following:

- The common-law doctrine of necessaries.
- Any laws currently in place regarding what health care services or medical treatments are lawful in North Carolina or who is authorized within this State to provide such health care services or medical treatment.
- Any right or duty of a healthcare agent in accordance with Article 3 of Chapter 32A of the General Statutes (Healthcare Power of Attorney).
- Laws regarding the following:
  - The right or duty of a parent or guardian in the provision of services or treatments for a minor.
  - Newborn screenings for hereditary and congenital disorders, examination and testing of a child for lead poisoning, and health assessments for children entering kindergarten in the public schools.
  - Services or treatments ordered under the Workers Compensation Act.
  - Services or treatments for involuntary commitments for mental illness or substance abuse.
  - The taking of DNA or any other biological evidence in accordance with Chapter 15A of the General Statutes.
  - Physical or mental examinations ordered by a judge in a civil action.
  - Blood or genetic testing to establish paternity pursuant to statute.
  - The examination and testing of persons to determine possible exposure to nuclear, biological, or chemical agents caused by a terrorist incident.
  - The provision of health insurance as a condition of receiving State economic incentives.

This bill would have granted to an individual aggrieved by a violation standing to bring a private right of action for the violation. House Bill 2 would have created a duty on the part of the Attorney General to bring or defend a suit in State or federal court to enforce these provisions.

The bill was ratified on February 23, 2011. The Governor vetoed the bill on March 5, 2011, stating the bill is contrary to the federal constitution, that the matter is already being dealt with through the justice system, and expressing concerns for the bill's effect on other programs. The House failed to override the veto on March 9, 2011. (AJ)

Community College/Opt Out of Federal Loan Program

HB 7 would have allowed a community college to opt out of participating in the William D. Ford Federal Direct Loan Program (Program), if the board of trustees of the institution adopted a resolution declining to participate in the Program. A board of trustees adopting such a resolution would have been allowed to later rescind the resolution and participate in the Program, but would not have been able to decline participation in the Program for a second time.

The State Board of Community Colleges must ensure that all the community colleges have at least one counselor to inform students about available federal programs and funds, but only counselors at colleges participating in the William D. Ford Federal Direct Loan Program would be required to inform students about the Program.

This bill was ratified April 5, 2011, and would have become effective July 1, 2011. The Governor vetoed the bill on April 13, 2011, and no further action was taken by the General Assembly (DC)

Restore Confidence in Government

House Bill 351 would have required all voters appearing in person to vote, whether on Election Day, one-stop absentee, or same-day registration voting, to present a photo identification (ID) when voting in person. The bill would have provided for the following photo IDs to be accepted:

- North Carolina drivers license, including a learner's permit or provisional license.
- Special North Carolina ID card for non-operators.
- ID card issued by a branch, department, agency, or entity of the State of North Carolina, any other state, or the United States.
- United States passport.
- Employer ID card issued by a branch, department, agency, or entity of the United States government, State of North Carolina, or any county, municipality, board, authority, or other entity of the State of North Carolina.
- United States military ID card.
- Tribal ID card.
- North Carolina Voter ID card.

Any individual not having one of the required photo IDs would have been allowed to vote a provisional ballot. Voters casting provisional ballots as a result of failure to show photo ID would have been required to appear in person at the county board of election no later than the conclusion of the election canvass (10^{th} day following the general election and 7^{th} day following any other election (G.S. 163-182.5)) to seek counting of the provisional ballot in one of two ways:

- Provide photo ID and execute an affidavit that the person voted on the relevant day and cast a provisional ballot.
- Execute an affidavit that the voter has a sincerely held religious objection to being photographed and that the person voted on the relevant day and cast a provisional ballot.

Unless the vote had been disqualified for some other legal reason, the board would have been required to count the ballot.

For those individuals without one of the required photo IDs, two options would have existed to obtain a required photo ID:

- County boards of elections would have been authorized to issue voter ID cards at no cost to registered voters of that county who do not have a valid unexpired drivers' license, learner's permit, provisional license, or special ID card for non-operators. The cards could be used only for voting purposes, and the bill would have required

that certain information about the person be printed on the card, including a photograph of the voter.

- The Division of Motor Vehicles (DMV) would have been directed to issue, to individuals registered to vote in North Carolina without a photo ID required for voting, a special ID card upon the individual signing an un-notarized affidavit attesting to registration and lack of acceptable photo ID. DMV would not have charged a fee for the special ID under these circumstances.

The bill would have required that voters be educated about the photo ID requirements through regular mailings, State and county board of election websites, notices of elections, posting at polling sites, the Judicial Voters Guide, and public service announcements.

The bill was ratified on June 16, 2011. The Governor vetoed the bill on June 23, 2011. On July 26, 2011, the House failed to override the Governor's veto, but moved to reconsider the last action taken. No further vote has been taken. If enacted, House Bill 351 would need to be "pre-cleared" by the U.S. Department of Justice prior to implementation. (EC)

Extend Unemployment Insurance Benefits/Continuing Resolution

HB 383 would have made changes to the State's unemployment insurance benefit laws to enable the payment of extended unemployment benefits through federal funds, and would have provided for a continuation of State expenditures for the operation of State government past June 30, 2011, in the event the Current Operations and Capital Improvements Appropriations Act of 2011 did not become law by that date. The bill was ratified on April 16, 2011, and vetoed by the Governor the same day, because the Governor objected to budget provisions in the bill. No further action was taken by the General Assembly, and on June 3, 2011, the Governor signed Executive Order 93 to restore unemployment insurance benefits to eligible North Carolinians. (BP)

Water Supply Lines/Water Violation Waivers

HB 482 would have directed the Secretary of Environment and Natural Resources to grant a waiver allowing additional connections to a water line funded with the Clean Water and Natural Gas Critical Needs bonds in certain protected watersheds, if the design capacity and size of the existing line can accommodate the additional connections, and the purpose is either to address an existing threat to public health or water quality, or to provide water to a habitable structure on a lot zoned for single family homes, if the lot was platted at the time of the construction of the water line. HB 482 also would have required the Department of Environment and Natural Resources (Department) to remit any penalty assessed between June 1, 2010, and July 1, 2011, against a poor county for any violations of the conditions of a National Pollutant Discharge Elimination System (NPDES) permit issued to the county, any unauthorized discharge of sludge into the waters of the State, and any violations of stream standards and wetland standards resulting from an unauthorized discharge of sludge, if the county satisfies all of the following conditions:

- The county promptly abated continuing environmental damage resulting from the violation, and it has been determined by the Department that the sludge removal resulting from the violation is satisfactory and complete.
- The county has not been assessed civil penalties for any previous violations.
- The county's water treatment plant was operated by a private contractor for the majority of the plant's operating life and received no notice of any violations during that time.
- The county agrees to pay to the Department the investigative costs regarding the violations.

- The county agrees that if the penalty is remitted pursuant to this act, the county will use funds in an amount equal to the lowest amount of the proposed assessment for the violations to implement the remaining remedial actions identified as necessary by the Department.

For purposes of this provision, a poor county is a county: (1) with an unemployment rate on the date of the assessment of the penalty that is at least 2.5% higher than the State average, and (2) in which, according to the 2008 U.S. Census, at least 18% of the county residents are below the poverty level.

HB 482 was ratified on June 16, 2011. The Governor vetoed the bill on June 27, 2011. As of the date of publication of this document, no vote to override the veto had been taken, but the veto remains subject to override. If the veto is overridden, the bill would become effective on the date of the final override vote. (JH)

Balanced Budget Act of 2011

SB 13 would have provided the Governor with the power to generate savings for the remainder of the 2010-2011 fiscal year by reducing expenditures by $400 million. The bill also would have provided for direct transfers or withholdings from certain accounts. SB 13 was ratified on February 14, 2011, and vetoed by the Governor on February 22, 2011. The Senate successfully voted to override the veto on March 9, 2011. This bill would become effective if the House overrides the Governor's veto. (JM)

State Health Plan/Appropriations and Transfer

SB 265 would have provided funding for the State Health Plan for Teachers and State Employees for the 2011-2013 fiscal biennium. The bill was ratified on April 5, 2011. The Governor vetoed the bill on April 13, 2011, stating that the bill had insufficient input from retired workers and teachers' groups and asking the General Assembly for a "more inclusive" version of the bill. The Senate overrode the Governor's veto on April 14, 2011. The House did not attempt to override the Governor's veto.

SB 265 was similar to S.L. 2011-85 (SB 323) (See **State Government**), which was enacted into law and modified by S.L. 2011-96 (HB 578). Among the differences with SB 323, SB 265 did not give the State Treasurer general authority to set a partially contributory rate of $0. (TH)

Energy Jobs Act

SB 709 sought to increase energy production in the State by:

- Providing for the appropriation of royalties and revenues from offshore and onshore energy production.
- Directing the Governor to develop a regional compact for offshore energy exploration.
- Directing the Department of Environment and Natural Resources and the Energy Jobs Council to provide a report on the potential of onshore shale gas resources.
- Amending the Energy Policy Act to reform the Energy Policy Council into the Energy Jobs Council and changing the membership, goals, and duties of the Council.

SB 709 was ratified by the General Assembly on June 18, 2011, and vetoed by the Governor on June 30, 2011. The Senate successfully voted to override the veto on July 13, 2011. This bill would become effective if the House overrides the Governor's veto. (HF)

No Dues Checkoff for School Employees

SB 727 would eliminate the dues checkoff option for active and retired public school employees. SB 727 was ratified on June 9, 2011, and vetoed by the Governor on June 18, 2011. The Senate successfully voted to override the veto on July 13, 2011. This bill will become effective if the House overrides the Governor's veto. (JM)

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