

# **SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2012**



# **SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION**

**2011 GENERAL ASSEMBLY  
2012 REGULAR SESSION**



**RESEARCH DIVISION  
N.C. GENERAL ASSEMBLY  
SEPTEMBER 2012**

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To the Members of the 2012 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 2012 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.

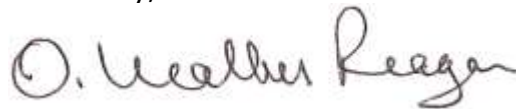
The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also includes a listing of legislative, independent, and agency studies. A bill/session law index listing the page number of each summary is at the end of the 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, Shelly DeAdder, Heather Fennell, Kory Goldsmith, Trina Griffin, Tim Hovis, Jeff Hudson, Amy Jo Johnson, Sara Kamprath, Brad Krehely, Peter Ledford, 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, and Susan Sitze. Dan Ettefagh, of the Bill Drafting Division, also contributed to this document. Jennifer Mundt is chief editor of this year's publication, and Kara McCraw and Brenda Carter are co-editors. Lucy Anders and Wilma Hall, 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 publication 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 this publication 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**

#### **Continue Local Food Advisory Council**

S.L. 2012-75 ([SB 491](#)) extends the operation of the North Carolina Sustainable Local Food Advisory Council (Council) to 2015, replaces the seat on the Council held by the North Carolina Farm Transition Network, Inc. with the Conservation Trust for North Carolina, and amends the duties of the Council to eliminate its authority to study any other program and policy issue the Council considers pertinent.

This act became effective June 26, 2012. (BR)

#### **Wildlife Licenses/Eliminate Penalty**

S.L. 2012-81 ([SB 868](#)) specifies that all annual licenses required to hunt, fish, or trap are valid for a period of 12 months from the effective date printed on the face of the license. The effective date is the later of the date of purchase of a new license or the first day after the expiration of a currently valid license of the same type held by the licensee.

This act becomes effective July 1, 2013. (MM)

#### **Rendering Act Amendments**

S.L. 2012-127 ([HB 512](#)). See **Commercial Law and Consumer Protection**.

#### **B.R.I.D.G.E. Youthful Offenders/Priority and Reporting**

S.L. 2012-142, Sec. 11.1 ([HB 950](#), Sec. 11.1). See **Courts, Justice, and Corrections**.

#### **Clarify Requirements to Receive North Carolina Agriculture Cost Share Program Funds or Agriculture Water Resources Assistance**

S.L. 2012-142, Sec. 11.2A ([HB 950](#), Sec. 11.2A) clarifies the eligibility requirements for the North Carolina Agriculture Cost Share Program or Agriculture Water Resources Assistance Program. Applicants must establish eligibility by providing one or more of the following to the Soil and Water Conservation Commission (Commission):

- A copy of the farm owner's or operator's farm owner federal tax Schedule F (Form 1040) or an equivalent form for the most recent tax year showing the farm owner's profit or loss from farming.
- A copy of the farm's agricultural exemption certificate issued to the farm owner by the Department of Revenue.
- A copy of the sound forest management plan for forestland actively engaged in the commercial growing of trees.

This section also provides that the Commission may, in extraordinary circumstances, permit an applicant to establish that they are engaged in farming with an alternate form of

documentation if the farm has a conservation plan that meets the statutory purposes of the program.

This section became effective July 1, 2012. (MM)

## **Research Stations Nonreverting Fund**

S.L. 2012-142, Sec. 11.4 ([HB 950](#), Sec. 11.4) establishes the Research Stations Fund as a special revenue fund within the Research Stations Division of the Department of Agriculture and Consumer Services. The Fund may be used only to develop, improve, repair, maintain, and operate research stations operated by the Research Stations Division.

This section became effective July 1, 2012. (MM)

## **Wine and Grape Growers Council Transferred to Department of Agricultural and Consumer Services**

S.L. 2012-142, Sec. 13.9A ([HB 950](#), Sec. 13.9A), as amended by S.L. 2012-145, Sec. 4.5 ([SB 187](#), Sec. 4.5), transfers all functions, powers, duties, and obligations previously vested in the Wine and Grape Growers Council within the Division of Travel and Tourism of the Department of Commerce to the Markets Division of the Department of Agriculture and Consumer Services.

This section became effective July 1, 2012. (MM)

## **Soil and Water Conservation Clarifications**

S.L. 2012-145, Sec. 4.3 ([SB 187](#), Sec. 4.3) makes soil and water conservation clarifications as follows:

- Allows the Division of Soil and Water Conservation (Division) of the Department of Agriculture and Consumer Services to allocate \$275,000 designated for the Roanoke and Pasquotank River basins and for the implementation of amended Conservation Reserve Enhancement Program (Program) agreements to be used for operation and implementation of the Program in any of the State's river basins eligible for the Program.
- Allows the Soil and Water Conservation Commission to consider water use efficiency, availability, and storage programs when developing and approving best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control.
- Conforms an animal waste management reporting requirement to reflect the recent transfer of the Division from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

This section became effective July 1, 2012. (MM)

## **Studies**

### **Referrals to Existing Commissions/Committees**

#### **Forest Fires/Annual Report**

S.L. 2012-142, Sec. 11.2 ([HB 950](#), Sec. 11.2) requires the Commissioner of Agriculture to submit a report on wildfires on October 1 of each year, beginning in 2012, to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, the Joint Legislative Commission on

Governmental Operations, and the Fiscal Research Division. The report must include detailed information on all major or project wildfires during the prior fiscal year.

This section became effective July 1, 2012. (MM)

## **Southeastern North Carolina Agricultural Center and Farmers Market/Study Options**

S.L. 2012-142, Sec. 11.3 ([HB 950](#), Sec. 11.3) directs the Department of Agriculture and Consumer Services (Department) to study the operating model of the Southeastern North Carolina Agricultural Center and Farmers Market and recommend alternative operating models evaluated based on a goal of limiting subsidies from State funds in support of facility operations to no more than 50% of the facility's operating budget. The Department must report its findings and recommendations to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division on or before February 1, 2013.

This section became effective July 1, 2012. (MM)





## Chapter 2 Children and Families

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

### **Enacted Legislation**

#### **Adoption Law Changes**

S.L. 2012-16 ([HB 637](#)) makes the following changes to the laws regarding adoptions:

- Repeals the requirement that adoption petitions be filed within 30 days after the minor's placement.
- Exempts adoptions of competent adults from a requirement that the petition include a description and value estimation of the adoptee's property.
- Provides that the petitioner must initiate service of notice of the filing of a petition within 30 days after the filing date.
- Specifies that birth parent social and medical history information may be provided on forms reasonably equivalent to those provided by the North Carolina Department of Health and Human Services.
- Allows the agency preparing the adoption home study to redact income information and social security numbers of the prospective parent(s) from the copy of the home study given to the placing parent.
- Allows the clerk to permit a guardian ad litem for an incompetent birth parent to execute a relinquishment to an agency.
- Provides that a preplacement assessment must be prepared "substantially in conformance" with the requirements in the relevant statute.
- Allows a relinquishment to become void after a minor is placed and before the entry of the adoption decree if the agency, the person relinquishing custody, and the prospective adoptive parent mutually agree to the rescission.
- Clarifies that disclosure of certain information by an employee of a court, agency, or other person is exempt only when made to the adoptee, adoptive parent, birth parent, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent.

This act becomes effective October 1, 2012, and applies to actions filed on or after that date. (JP)

#### **Divorce/Domestic Violence Protective Order/Child Support Changes**

S.L. 2012-20 ([HB 589](#)) provides that only one continuance of not more than 10 days may be granted for a hearing on an ex parte domestic violence protective order, unless all parties consent or good cause is shown. It also provides that the hearing must have priority on the hearing calendar.

The act amends the listed exceptions to the termination of child support payments at age 18 to provide that if the child is enrolled in a cooperative innovative high school program authorized by statute, the payments will terminate when the child completes the fourth year of enrollment or reaches age 18, whichever occurs later.

This act becomes effective October 1, 2012, and applies to actions or motions filed on or after that date. (WGR)

## **Amend Grounds/Termination of Parental Rights**

S.L. 2012-40 ([HB 235](#)) authorizes the court to terminate the parental rights of a parent convicted of a sexually related offense that resulted in the conception of the juvenile.

This act becomes effective October 1, 2012. (JP)

## **Partnership for Children Participant Records**

S.L. 2012-67 ([HB 1056](#)). See **State Government**.

## **NC Pre-K**

S.L. 2012-142, Sec. 10.1 ([HB 950](#), Sec. 10.1). See **Health and Human Services**.

## **“Read NC” Early Literacy Initiative/Development Officers/ Assistance to Rural Partnerships**

S.L. 2012-142, Sec. 10.4 ([HB 950](#), Sec. 10.4). See **Health and Human Services**.

## **Sale of a Minor/Felony Offense**

S.L. 2012-153 ([SB 910](#)). See **Criminal Law and Procedure**.

## **Strengthen Child Safety Laws/Care Facilities**

S.L. 2012-160 ([HB 737](#)). See **Health and Human Services**.

## **Absconding Probation Violators Forfeit Benefits**

S.L. 2012-170 ([HB 1173](#)). See **Courts, Justice, and Corrections**.

## Chapter 3

# Commercial Law and Consumer Protection

Drupti Chauhan (DC), Erika Churchill (EC), Karen Cochrane-Brown (KCB),  
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Bill Patterson (BP), Wendy Graf Ray (WGR), Greg Roney (GR)

## **Enacted Legislation**

### **Beer Franchise Law Clarifications**

S.L. 2012-4 ([SB 745](#)), as amended by S.L. 2012-194, Sec. 45.5 ([SB 847](#), Sec. 45.5), makes several changes to the statutes governing the relationship between beer suppliers and beer wholesalers. The act makes the following clarifying changes regarding franchise agreements between beer suppliers and beer wholesalers:

- Small breweries may terminate franchise agreements in certain situations.
- A franchise agreement applies to all supplier products under the same brand name.
- A written franchise agreement cannot change the definition of good cause for termination of an agreement or change a wholesaler's rights under the Beer Franchise law.
- Good cause for altering, terminating, or not renewing a franchise agreement does not include certain situations, including sale of trade name of brand supplied, new franchise agreements, or the consolidation of franchises.

The act prohibits suppliers from engaging in specific actions with regard to their business relationships and agreements with wholesalers. Suppliers may not include coercive terms in franchise agreements, prohibit wholesalers from distributing products of another supplier, or discriminate between licensed wholesalers regarding pricing, effective October 1, 2012. The act clarifies a wholesaler may transfer rights under a franchise agreement by merging with another qualified wholesaler, or by transferring business to another qualified wholesaler. The act also allows the ABC Commission to require mediation of certain disputes and authorizes the ABC Commission to grant a waiver to allow the general manager of a board to be the finance officer upon a showing of good cause.

Except as otherwise provided, this act became effective June 4, 2012, and applies to all transactions on or after that date. (HF)

### **Utilities Commission/Criminal Records Check**

S.L. 2012-9 ([HB 340](#)). See **Utilities**.

### **Modify Mortgage Regulation Funding**

S.L. 2012-37 ([SB 806](#)) creates a new funding mechanism for mortgage regulation by replacing the licensing fees for mortgage companies with assessments. An assessment would include a base amount of \$2,000 plus an additional amount based on loan and servicing volume. The act also repeals the renewal fees that were paid by mortgage lenders, brokers, and servicers along with the licensing fees.

This act becomes effective October 1, 2012. (DC)

## Metal Theft Prevention Act of 2012

S.L. 2012-46 ([HB 199](#)) recodifies provisions of the General Statutes pertaining to the regulation of precious metal businesses and makes necessary technical and conforming changes. The act also provides for the regulation of sales and purchases of metals in the following ways:

- Requires secondary metals recyclers to issue receipts when purchasing regulated metals property. Receipts must be issued to and signed by the person delivering the property.
- Requires secondary metals recyclers to maintain a record of purchase transactions; records must contain specified information and be kept for a period of at least two years from the date of purchase.
- Authorizes law enforcement to inspect regulated metals property in possession of the secondary metals recycler and all records in possession of the recycler. Receipts must be available for pickup by law enforcement or transmitted electronically to the law enforcement agency.
- Provides for the holding of property suspected to be stolen.
- Prohibits secondary metals recyclers from making cash payments for copper and prohibits cash payments of more than \$50. Payments in excess of \$50 may be made only by check or money order.
- Requires the issuance of purchase permits by the county sheriff. A permittee is required to have a fixed site in the county where the permit is to be issued. Permits are valid for 12 months. There is no fee for the permit.
- Makes knowing and willful violations punishable as a Class 1 misdemeanor for a first offense; second or subsequent violations are a Class I felony.
- Provides for the revocation of a purchase permit for three or more violations.
- Provides for restitution by the defendant.

The act also makes it a criminal offense to cut, mutilate, deface, or otherwise injure the real or personal property of another to obtain nonferrous metals. Violations are punishable as prescribed, ranging from a Class 1 misdemeanor to a Class D felony depending upon the amount of property loss and whether the violation results in the injury or death of a person.

This act becomes effective October 1, 2012, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date are not abated or affected by the act. (WGR)

## Banking Law Modernization Act

S.L. 2012-56 ([SB 816](#)), as amended by S.L. 2012-194, Sec. 53 ([SB 847](#), Sec. 53), rewrites the State Banking Law as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.

The act creates more comprehensive definitions relating to capital adequacy and various banking organizations affected by State law and federal and State supervisory and regulatory agencies.

The act reauthorizes the State Banking Commission, reduces its membership from 22 to 15 members, and continues the authority of the Commissioner of Banks (Commissioner) and the Office of Commissioner of Banks as the agency that supervises banks.

The remainder of the act rewrites the laws related to:

- **Organization of a Bank.** – Aligning the process with the more recently rewritten Business Corporation Law.
- **Governance of a Bank.** – Setting standards for how the board of directors must operate and control the bank.
- **Powers of Banks.** – Listing seven express powers as well as confirming that a bank has all powers "necessary and incident" to carry out the business of banking.

- **Bank Operations.** – Including authorization for all types of deposit accounts.
- **Control Transactions; Combinations; Conversions.** – Setting the process for changes to the ownership or control of a bank.
- **Bank Supervision.** – Describing the Commissioner's authority to supervise banks.
- **Supervisory Liquidation; Voluntary Dissolution and Liquidation.** – Setting the process for the Commissioner to supervise the dissolution and liquidation of a bank.
- **Bank Holding Companies.** – Defining the Commissioner's supervisory authority over these entities.

This act becomes effective October 1, 2012, except that the provisions relating to the reduction of the membership of the State Banking Commission become effective April 1, 2013. (KCB)

## **Amend Uniform Commercial Code Article 9/Secured Transactions**

S.L. 2012-70 ([HB 1068](#)) amends Article 9 of the Uniform Commercial Code, which governs secured transactions in personal property and fixtures in all 50 states. The act is a recommendation of the General Statutes Commission and does the following:

- Provides greater guidance as to the name of an individual debtor to be provided on a financing statement. If an individual debtor has a current drivers license or special identification card issued by the State, then that name must be used. Otherwise, the name must be the debtor's individual name or the surname and first personal name.
- Provides greater specificity as to the debtor's name on a financing statement when the debtor is a corporation, limited liability company, or limited partnership, and when the collateral is held in a statutory or common law trust or in a decedent's estate. The entity's name on the financing statement must be the name on its organizational documents.
- Provides greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

This act becomes effective July 1, 2013. (BK)

## **Rendering Act Amendments**

S.L. 2012-127 ([HB 512](#)) requires persons collecting waste kitchen grease for resale to provide the purchaser with a statement of ownership. This act defines waste kitchen grease as animal fats or vegetable oils that have been used for cooking in a food establishment.

This act creates criminal penalties for three offenses: (1) taking waste kitchen grease or the grease container where a notice states that unauthorized removal is prohibited without written consent of the owner; (2) intentionally contaminating or damaging any grease container or grease; and (3) knowingly placing a label on a grease container owned by another to claim ownership of the container. The offenses are punishable as a Class 1 misdemeanor if the value of the container and grease is \$1,000 or less. The offenses are punishable as a Class H felony if the value of the container and grease exceeds \$1,000.

This act also requires rendering operations to carry general liability insurance of \$1 million.

This act becomes effective January 1, 2013, and the criminal penalties apply to offenses committed on or after that date. (GR)

## **Rule in Dumpor's Case/Broker Price Opinions**

S.L. 2012-163 ([SB 521](#)) repeals a common law property rule under which a landlord's consent to assignment of a lease was deemed to waive forever the landlord's right subsequently to enforce a lease provision prohibiting assignment.

The act, as amended by S.L. 2012-194, Sec. 61 ([SB 847](#), Sec. 61), also enacts standards governing broker price opinions by licensed real estate brokers, prohibits the use of a broker price opinion in lieu of an appraisal required under State or federal law, authorizes the North Carolina Real Estate Commission (Commission) to adopt rules consistent with the act's provisions, makes conforming changes to the North Carolina Real Estate Appraisers Act, and prescribes conditions under which appraisers may complete appraisals that include a reduced scope of work or reporting level.

The provisions of the act granting rule-making authority to the Commission became effective July 1, 2012, and the remainder of the act becomes effective October 1, 2012. (BP)

## **Accountability for Publicly Funded Nonprofits**

S.L. 2012-169 ([HB 572](#)) creates new disclosure requirements for nonprofit corporations that receive more than \$5,000 in a fiscal year from a unit of local government, the State, or the federal government. Upon request, the nonprofit corporation must provide a copy of its most recent financial report and a copy of its most recently filed Internal Revenue Service Form 990 or Form 990-EZ. A nonprofit may comply by posting the required documents on the nonprofit's public Web site or by submitting the documents to a third party that maintains a database and Web site and that does not charge a fee for access to the information.

The disclosure requirement does not apply to a corporation required to report to either the North Carolina Medical Care Commission of the Department of Health and Human Services or the Local Government Commission of the Department of State Treasurer. It also does not apply to private colleges that are already required to file disclosures to the State under the State Budget Act.

This act becomes effective October 1, 2012, and applies to nonprofit corporations receiving public funding in the form of grants or loans on or after that date. (KG)

## **Mechanics Liens/Payment Bond Reforms**

S.L. 2012-175 ([HB 1052](#)). See **Property, Trusts, and Estates**.

# Chapter 4

## Courts, Justice, and Corrections

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

### **Enacted Legislation**

#### **Amend Innocence Commission Laws**

S.L. 2012-7 ([HB 778](#)) amends laws relating to the preservation of biological evidence and the North Carolina Innocence Inquiry Commission.

**Biological Evidence.** – The act makes the following changes:

- Requires a custodial agency to preserve all biological evidence, regardless of the collection date; to prepare an inventory of all evidence in the custody of the agency; and to provide a defendant with a copy of any court order that directed the disposal of evidence.
- Adds to the statutory requirements which must be met prior to any disposal of evidence.

**Innocence Inquiry Commission (Commission).** – The statutes applicable to the Commission are amended as follows:

- Adds a definition of "claimant" as a person asserting complete innocence of any criminal responsibility for a felony crime, or for any reduced level of criminal responsibility for that crime.
- Deletes the provision that "any person" may refer a claim of actual innocence to the Commission; only a court, a State or local agency, a claimant, or a claimant's counsel may refer a claim.
- Removes the Commission's discretion to limit the victim's presence at any portion of the proceedings.
- Adds a prehearing conference requirement, at which time the District Attorney or designee may inspect any evidence not previously submitted in any judicial proceedings, and other relevant evidence.
- Authorizes the District Attorney or designee to provide the Commission with a written statement, which must be included in the record of proceedings.
- Changes the standard for consideration of prosecutorial misconduct and the appointment of a special prosecutor. Prior law allowed the Chair of the Commission to seek appointment of a special prosecutor by the Director of the Administrative Office of the Courts based upon an "allegation" of prosecutorial misconduct. The act provides that the Commission must conclude that there is credible evidence of prosecutorial misconduct; in such case, the Chair may request the Attorney General to appoint a prosecutor. The Attorney General may not assign any attorney who prosecuted the defendant or who is a prosecutor from the district where the defendant was convicted.
- Provides procedures for the Commission to provide notice to the State for the preservation of the results of forensic or DNA testing, and for further testing.
- Limits persons eligible to seek compensation from the Commission for having been convicted and incarcerated and later found to be innocent after completion of Commission proceedings. Only persons who pled not guilty or nolo

contendere are eligible to petition for compensation (eliminates eligibility for persons who pled guilty).

This act became effective June 7, 2012, and applies to claims pending on that date, or filed on or after that date. (HAP)

## **No In Person Service Required/50C Orders**

S.L. 2012-19 ([HB 660](#)) amends the service requirements for a 50C Civil No Contact Order. Under prior law, if a civil no contact order was issued and the respondent was not present in court, the sheriff was required to serve the order on the respondent in person. This act amends the law to allow the respondent to be served in person, through an agent, by certified mail or signature confirmation mail, or by delivery service with receipt.

This act became effective June 11, 2012. (WGR)

## **Review Domestic Violence Program Participation**

S.L. 2012-39 ([HB 176](#)) provides for court review of a defendant's participation in a court-ordered abuser treatment program (ATP) and expands the types of offenses recorded by the clerk as domestic violence offenses on conviction records.

North Carolina law provides that a court may order a defendant found responsible for acts of domestic violence to attend and complete an ATP. This act adds the following requirements concerning ATPs:

- A defendant must comply with all rules of the program.
- The defendant's discharge from the program for rules' noncompliance must be reported to the court.
- The defendant's probation officer must provide the ATP with a copy of the court order specifying the conditions of probation.
- The program must notify the probation officer if the defendant violates any program rules.
- The court must schedule a compliance review hearing within 60 days of the entry of judgment and every 60 days thereafter until the defendant completes the program.

The act also expands the types of offenses required to be designated as domestic violence offenses on conviction records to include any act that falls under the definition of domestic violence in the domestic violence protective order statutes.

This act becomes effective December 1, 2012, and applies to defendants placed on probation on or after that date. (WGR)

## **Amend Grounds/Termination of Parental Rights**

S.L. 2012-40 ([HB 235](#)). See **Children and Families**.

## **Amend Death Penalty Procedures**

S.L. 2012-136 ([SB 416](#)) removes a requirement that the Governor and Council of State approve of execution protocols, precludes a court from declaring a case as noncapital as a sanction for a pretrial hearing delay, and amends procedures for claims filed under the Racial Justice Act.

The act makes the following changes to the Racial Justice Act:

- Defines "at the time of the offense" as ten years prior to the offense to two years after the sentence.
- Requires the person seeking relief to waive all claims of parole eligibility.



- Limits the use of statistical evidence to cases in the county and prosecutorial district (previously included statewide and judicial district), and is relevant only to the following:
  - Whether death sentences were sought or imposed significantly more frequently upon persons of one race or another or as punishment for capital offenses against persons of one race as opposed to another race. The act deletes the race of victim as a subject for the introduction of statistical evidence.
  - Whether race was a significant factor in exercising peremptory challenges.
- Provides that statistical evidence alone is insufficient to prove that the race of the defendant was a significant factor in the defendant's case.

All petitions previously filed under the Racial Justice Act are subject to the provisions of the act, except a case where a court made findings of fact and conclusions of law prior to the act's effective date. If a case excepted from the act is reversed on appeal, the act applies to any rehearing.

This act became effective July 2, 2012, and applies to executions and Rule 24 pretrial hearings scheduled on or after that date. (HAP)

## **B.R.I.D.G.E. Youthful Offenders/Priority and Reporting**

S.L. 2012-142, Sec. 11.1 ([HB 950](#), Sec. 11.1) requires the Division of Adult Correction of the Department of Public Safety to give priority to the B.R.I.D.G.E. Youthful Offenders Program, operated in cooperation with the North Carolina Forest Service, when assigning youthful offenders from the Western Youth Institution to work programs. This section also requires the North Carolina Forest Service to submit an annual report on the program beginning October 1, 2012.

This section became effective July 1, 2012. (KQ)

## **Establish Human Trafficking Commission**

S.L. 2012-142, Sec. 15.3A ([HB 950](#), Sec. 15.3A), as amended by S.L. 2012-194, Sec. 55.5 ([SB 847](#), Sec. 55.5), establishes the North Carolina Human Trafficking Commission (Commission) within the Department of Justice. The Commission is charged with applying for funding to combat human trafficking (trafficking), commissioning research on trafficking, educating about trafficking, suggesting ways to eradicate trafficking, assisting in developing coordinated efforts to eradicate trafficking, identifying law enforcement gaps, and considering if trafficking should require sex offender and public protection registration. The Commission will terminate on December 31, 2014.

This section became effective July 1, 2012. (KQ)

## **Family Court Programs**

S.L. 2012-142, Sec. 16.2 ([HB 950](#), Sec. 16.2) requires the Administrative Office of the Courts to provide direction and oversight to the existing family court programs to ensure efficiency, effectiveness, and compliance with best practices. The Administrative Office of the Courts must report on its efforts to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2013.

This section became effective July 1, 2012. (KQ)

## **Foreign Language Interpreters for the Courts**

S.L. 2012-142, Sec. 16.3 ([HB 950](#), Sec. 16.3) repeals the statutory provision that authorized the payment of reasonable fees for a foreign language interpreter from funds

appropriated to the Administrative Office of the Courts in certain instances. This section allows the Judicial Department to use its funds to provide assistance to persons with limited proficiency in English.

This section became effective July 1, 2012. (SD)

## **Expand Uses for Court Information Technology Fund**

S.L. 2012-142, Sec. 16.5 ([HB 950](#), Sec. 16.5) changes the name of the Court Information Technology Fund to the Court Information Technology and Facilities Fund (Fund) and provides an additional mandatory use of the Fund – to upgrade, maintain, and operate State judicial facilities.

This section became effective July 1, 2012, and expires June 30, 2013. (SD)

## **Waiver of Mediation Fees to Require Finding of Just Cause**

S.L. 2012-142, Sec. 16.6 ([HB 950](#), Sec. 16.6) requires the court to enter a written order when granting a waiver or reduction of the dispute resolution fee for cases resolved in mediation. The order must be supported by findings of fact and conclusions of law determining just cause to grant the waiver or reduction.

This section also requires the court to enter a written order when granting a waiver or reduction of the costs in criminal actions, including costs for the services of the State Crime Laboratory facilities and any crime laboratory facility operated by local governments. The order must be supported by findings of fact and conclusions of law determining there is just cause to grant the waiver or reduction.

This section became effective July 1, 2012, and applies to fees waived on or after that date. (BC)

## **Post-Release Supervision and Parole Commission Changes**

S.L. 2012-142, Sec. 25.1(g) ([HB 950](#), Sec. 25.1(g)) makes changes with regard to the membership of the Post-Release Supervision and Parole Commission (Commission) and requires members of the Commission appointed by the Governor to have the recognized ability, training, experience, and character to qualify for able service on the Commission.

Effective August 1, 2012, the Commission consists of three full-time members, including two commissioners who formerly served only half-time. Effective February 1, 2013, the Commission will consist of four full-time members, with the additional member to be appointed by the Governor. (BC)

## **Continuous Alcohol Monitoring Law Changes**

S.L. 2012-146 ([HB 494](#)), as amended by S.L. 2012-194, Sec. 51.5 ([SB 847](#), Sec. 51.5), authorizes, but does not require, the use of continuous alcohol monitoring (CAM) systems in various settings as follows:

- As a condition of any pre-trial release, including for domestic violence offenders. Previously, CAM was authorized only as a pre-trial release condition for repeat Driving While Impaired (DWI) offenders.
- As a condition of probation for community or intermediate punishment, or as a special condition of probation.
- If abstinence from alcohol is required by the court as a condition of probation for an intermediate punishment, the probation officer has the delegated authority to require CAM, unless the court has specifically removed that delegated authority.
- As a condition of probation for a conviction of driving while license revoked where the revocation was for a DWI offense.

- As a condition of special probation in DWI sentencing.
- As a condition of a custody or visitation order.

This act also removes prohibitions in prior law that prohibited a defendant from paying costs associated with substance abuse monitoring systems, including CAM, or any other condition of special probation instead of or prior to making certain other payments, and provides that fees required for CAM must be paid directly to the vendor. Additionally, when CAM is being provided as a condition of probation, the vendor must obtain authorization from the court before terminating CAM for nonpayment.

This act becomes effective December 1, 2012, and applies to offenses committed or any custody and visitation orders issued on or after that date. (SLS)

## **Minors/Sentencing for First Degree Murder**

S.L. 2012-148 ([SB 635](#)) amends the State's sentencing laws to comply with the United States Supreme Court ruling in *Miller v. Alabama*. The Court held that a mandatory sentence of life in prison without parole for a defendant who committed first degree murder before the age of 18 violates the 8<sup>th</sup> Amendment to the United States Constitution. The act amends the sentencing laws for persons under 18 who commit first degree murder to provide that:

- If the defendant's conviction was based solely on the felony murder rule, the sentence must be life imprisonment with the possibility of parole after serving 25 years.
- If the defendant's conviction was based on premeditation, the court will hold a sentencing hearing. The defendant may submit any mitigating factors, and the State will have the opportunity for rebuttal. After considering the circumstances of the offense and the particular circumstances of the defendant, the court has two sentencing options:
  - Life imprisonment without parole.
  - Life imprisonment with the possibility of parole after serving 25 years.

The act provides for the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender and the Conference of District Attorneys, to study the provisions in the act, United States Supreme Court precedent relevant to sentencing a minor for first degree murder, sentencing policies in other jurisdictions, and any other matter relating to the sentencing of minors convicted of first degree murder. The Commission must report its findings and recommendations to the General Assembly no later than January 31, 2013.

This act became effective July 12, 2012, and applies to sentencing hearings held on or after that date, and resentencing hearings for defendants under the age of 18 at the time of the offense who were sentenced to life imprisonment without parole prior to July 12, 2012. (HAP)

## **Absconding Probation Violators Forfeit Benefits**

S.L. 2012-170 ([HB 1173](#)) gives the court the discretion to suspend the receipt of any public assistance benefits for a probationer who absconds or otherwise willfully avoids arrest after the issuance of a warrant for a probation violation. The suspension will continue until the violator surrenders to or otherwise is brought under the jurisdiction of the court. The act does not affect the eligibility of a violator's family members for whose benefit the public assistance is intended. The Department of Health and Human Services (DHHS) and the Department of Commerce (Commerce) must adopt rules to assist local law enforcement in enforcing the provisions of the law.

The provision regarding the suspension of benefits becomes effective October 1, 2012. The section directing DHHS and Commerce to adopt rules became effective July 12, 2012. (JP)

## End Court Orders/Establish Local Intake Procedures

S.L. 2012-172 ([HB 853](#)) makes the following changes to procedures and laws relating to juveniles who may come under the jurisdiction of the district court:

- Eliminates the statutory requirement that the chief district court judge establish procedures for receiving delinquency or undisciplined complaints and the filing of petitions on those complaints.
- Places the responsibility for standards and inspections for county detention homes with the Department of Public Safety (DPS) and the authority for holdover facilities in county jails with the Secretary of Health and Human Services in consultation with DPS.
- Requires that local governments operating juvenile detention facilities comply with standards and rules adopted by DPS, effective July 1, 2013.
- Limits the duration of secure custody for juveniles alleged to be undisciplined who have failed to appear in court to 24 hours, excluding weekends and holidays, effective October 1, 2012.
- Provides procedures for review of juvenile protective supervision, including providing sanctions for violation of any conditions of the protective supervision, effective October 1, 2012.

Except as otherwise noted, this act became effective July 12, 2012. (JP)

## Modernize Jury List Procedures

S.L. 2012-180 ([SB 133](#)) eliminates obsolete provisions from, and makes modernizing and clarifying changes to, the laws governing preparation and storage of jury lists, including the following:

- Clarifies the master jury list is the list provided by the Commissioner of Motor Vehicles (Commissioner) to county jury commissions and requires the Commissioner to remove the names of individuals issued a driver's license of limited duration and holders of valid permanent resident cards issued a driver's license of regular duration.
- Requires the jury commission to prepare the master jury list during each odd-numbered year.
- Eliminates the requirement that the jury commission remove from the master list names of recently deceased county residents and that the State Registrar provide those names.
- Allows specified functions and procedures, including randomized selection procedures, to be performed by electronic data processing equipment.
- Clarifies references to the "master list" and the "alphabetized list."
- Eliminates obsolete procedures relating to use of a jury box.
- Restricts public access to juror information to a master list of juror names in alphabetical order, and requires addresses of prospective jurors to remain confidential absent a court order.
- Relieves the register of deeds of any responsibility for jury list preparation or maintenance.
- Allows the clerk of superior court to decrease the number of randomized names under certain conditions, and authorizes the clerk either to print and mail the juror summonses or to provide the necessary information to the sheriff, who will issue the summonses.
- Directs the clerk of superior court to keep a record of the excuses proffered by persons excused from jury duty on a list separate from the master list.

- Requires privileged health information of jurors to remain confidential and not subject to production under State public records laws.
- Authorizes the trial court administrator to perform the duties of the clerk relating to jury lists if the clerk of superior court and the senior resident superior court judge agree.
- Makes conforming changes to the State's motor vehicle laws.

The act also exempts persons summoned for jury service from paying ferry tolls to travel to and from their homes and the site of jury service.

This act became effective July 12, 2012. (JP)

## Justice Reinvestment Clarifications

S.L. 2012-188 ([HB 1021](#)) makes clarifying changes to the Justice Reinvestment Act (S.L. 2011-192) as follows:

- Authorizes the Chief of the Community Corrections Section, in written Division policy, to designate who the second witness should be on a waiver of rights required when a probation officer is exercising delegated authority to impose confinement periods for probation violation.
- Clarifies that confinement in response to a violation by a misdemeanor offender may be for a period up to 90 days, but the period of confinement does not have to be the remainder of the defendant's sentence.
- Clarifies a person ordered by the court to do community service as part of a community or intermediate punishment must pay the community service supervision fee.
- Clarifies that re-imprisonment for a violation of post-release supervision tolls the period of post-release supervision, but that a supervisee cannot be re-released on post-release supervision after having served all of his or her maximum time. This provision applies to supervisees violating the conditions of post-release supervision on or after July 16, 2012.
- Modifies the drug trafficking statutes and the post-release supervision statutes to clarify that post-release supervision applies to those offenses and to modify the maximum sentence to provide for the period of post-release supervision. These modifications become effective December 1, 2012, and apply to offenses committed on or after that date.
- Effective December 1, 2012, authorizes the Post-Release Supervision and Parole Commission to conduct the following types of hearings by videoconference:
  - Hearings regarding the revocation or termination of post-release supervision.
  - Hearings regarding revocation, termination, or suspension of parole.
  - Hearings regarding criminal contempt by sex offenders for willful refusal to accept or comply with the terms of post-release supervision.

Except as otherwise specified, this act became effective July 16, 2012. (SLS)

## Expunction/Nonviolent Offenses

S.L. 2012-191 ([HB 1023](#)) creates a new process to allow expunction of nonviolent felonies or nonviolent misdemeanors, regardless of the offender's age at the time of conviction, if after 15 years the person has had no other convictions for felonies or misdemeanors, other than traffic violations. The 15-year period is calculated from the conviction date or the completion of any sentence, period of post-release supervision, or period of probation. Multiple convictions occurring in the same session of court, where none of the offenses are alleged to have occurred after service of process for another offense, may all be expunged.

This act does not allow the expunction of Class A through G felonies; Class A1 misdemeanors; assaults; sex offenses requiring registration; specific sex-related and stalking offenses; certain drug offenses involving methamphetamines, heroin, or cocaine; ethnic intimidation; contamination of food or drink to incapacitate a victim; or use of a commercial vehicle to commit a felony.

The petition process includes payment of a \$175 fee, notice to the district attorney who has a right to file an objection to the petition, and judicial authority to call upon a probation officer for investigation or verification of petitioner's conduct.

Before granting the petition to expunge, the court must find:

- The petitioner has not had a previous conviction expunged under any of the expunction provisions. Expunction of a dismissed charge or not guilty finding will not prevent expunction under this act.
- The petitioner has remained of good moral character and has no outstanding or pending criminal cases.
- The petitioner has no other felony or misdemeanor convictions, other than a traffic violation.
- The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution.

No person who has had an offense expunged pursuant to this act will be guilty of perjury or giving a false statement for failure to acknowledge the offense. However, any person seeking certification as a law enforcement officer by the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission must disclose any and all convictions to the certifying Commission, even if those convictions have been expunged pursuant to this act.

This act makes a number of clarifying changes to the General Statutes pertaining to expunction.

This act becomes effective December 1, 2012. Clarifying changes to existing statutes apply to petitions filed on or after December 1, 2012, but petitions filed prior to that date are not abated by this act. (SLS)

## **Mediation**

S.L. 2012-194, Sec. 63.3 ([SB 847](#), Sec. 63.3) amends the statute encouraging the creation and use of community mediation centers to require mandatory mediation in district criminal court for misdemeanors that were generated by a citizen-initiated arrest warrant unless:

- The case involves domestic violence.
- The judge or District Attorney determines mediation is inappropriate.
- The case is tried in a county without mediation services.

The District Attorney may file a statement with the chief district court judge to opt out of the mandatory mediation for that prosecutorial district.

The section also eliminates a judge's discretionary authority to waive the fee for mediation of matters in district criminal court for good cause shown.

This section becomes effective December 1, 2012, and applies to offenses committed on or after that date. (EC)

## **Senior Superior Court Judge**

S.L. 2012-194, Sec. 63.5 ([SB 847](#), Sec. 63.5) amends the statute governing determination of the senior resident superior court judge in each judicial district. If the district has only one superior court judge, that judge is the senior resident superior court judge.

The act changes the selection in a district with more than one judge as follows:

- If there are two or more judges, the judge with the most continuous service as a regular resident superior court judge is the senior resident superior court judge. If two or more judges are of equal seniority, the oldest of the judges is the senior resident superior court judge.
- If there are two or more judges and the judicial district is wholly contained in one county and named as the sole venue for certain actions, the Chief Justice is to name the senior resident superior court judge.

This section became effective July 17, 2012, and applies to vacancies occurring on or after that date. (EC)

## **Studies**

### **Technical Revocation Center Study**

S.L. 2012-142, Sec. 14.3 ([HB 950](#), Sec. 14.3) requires the Division of Adult Correction of the Department of Public Safety (Department) to study the feasibility of creating a technical violation center to house probationers ordered to serve a period of 90 days in confinement due to a technical violation of the condition of probation. The Department must report its findings and recommendations to the Office of State Budget and Management and to the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than January 1, 2013.

This section became effective July 1, 2012. (KQ)

### **Strategic Plan for Facility Closure, Construction, and Repair**

S.L. 2012-142, Sec. 14.8 ([HB 950](#), Sec. 14.8) requires the Department of Public Safety (Department) to study the population dynamics of detention and secure confinement at Youth Development Centers operated by the Department and to submit a strategic plan for facility closure, construction, and repair and renovation to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by February 1, 2013.

This section became effective July 1, 2012. (KQ)

### **Study Uses for Edgecombe Youth Development Center**

S.L. 2012-142, Sec. 14.9 ([HB 950](#), Sec. 14.9) directs the Department of Public Safety (Department), in cooperation with the Department of Health and Human Services, to study potential uses for the facilities at the Edgecombe Youth Development Center (Center) and recommend means of continuing the facilities in productive use after the closure of the Center. The Department must report its findings and recommendations to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the Joint Legislative Oversight Committee on Health and Human Services by December 1, 2012.

This section became effective July 1, 2012. (KQ)

### **Study Management of Magistrate Schedules**

S.L. 2012-142, Sec. 16.1 ([HB 950](#), Sec. 16.1) directs the Administrative Office of the Courts to study the management of magistrate schedules throughout the General Court of Justice and to make recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2013.

This section became effective July 1, 2012. (KQ)





## Chapter 5

# Criminal Law and Procedure

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

## **Enacted Legislation**

### **Pseudoephedrine Amount Clarifications**

S.L. 2012-35 ([HB 941](#)). See **Health and Human Services**.

### **Terrorism/State Offense**

S.L. 2012-38 ([HB 149](#)) creates a State offense of terrorism. The offense occurs when a person commits an "act of violence" with the intent to do one of the following:

- Intimidate either the civilian population at large or an identifiable group of the civilian population.
- Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

"Act of violence" means first or second degree murder; manslaughter; any felony that includes an assault or use of violence or force against a person; any felony that includes the threat or use of any explosive or incendiary device; or any offense including the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

Violation of the act is punishable at one offense level higher than the underlying act of violence. If the underlying offense is a Class A or B1 felony, the terrorism offense is a Class B1 felony. Real or personal property used in connection with a violation is subject to seizure and forfeiture. Forfeiture is subject to prior security interests taken by a lender in good faith, and bona fide purchasers are protected from forfeiture.

This act also amends the continuing criminal enterprise statute to provide that violation of that statute while in violation of the terrorism statute is punishable as a Class D felony, rather than the Class H punishment for all other continuing criminal enterprise offenses.

This act becomes effective December 1, 2012, and applies to offenses occurring on or after that date. (SLS)

### **Metal Theft Prevention Act of 2012**

S.L. 2012-46 ([HB 199](#)). See **Commercial Law and Consumer Protection**.

### **Continuous Alcohol Monitoring Law Changes**

S.L. 2012-146 ([HB 494](#)), as amended by S.L. 2012-194, Sec. 51.5 ([SB 847](#), Sec. 51.5). See **Courts, Justice, and Corrections**.

### **School Violence Prevention Act**

S.L. 2012-149 ([SB 707](#)), as amended by S.L. 2012-194, Sec. 45(e) ([SB 847](#), Sec. 45(e)), amends the laws relating to violence on school grounds and creates a new offense of cyber-bullying of a school employee by a student.

### **School Violence. –**

- Provides that a school employee or volunteer who takes reasonable actions in good faith to end a fight or altercation between students is immune from civil or criminal liability.
- Requires that the District Attorney (DA), or designee, review and approve judicial process against a school employee for an offense occurring during the employee's course of duties. If the DA declines the review, only a magistrate (if available) specifically designated by the chief district court judge may issue any warrant or order for arrest, criminal summons, or other criminal process for an alleged misdemeanor offense by a school employee. This provision becomes effective on or after date of appointment of magistrate.
- Prohibits probation officers from visiting students during school hours on school property. An exception is made for probation officers working as part of the Division of Community Corrections School Partnership Program, with prior authorization by school administrators. This provision applies beginning with the 2012-2013 school year.
- Requires the supervisor of a school employee to immediately report an assault resulting in physical injury by a student on the employee to local law enforcement, and a principal, superintendent, or supervisor must not intimidate or threaten a school employee to prevent the employee from reporting to law enforcement an assault by a student. This provision applies beginning with the 2012-2013 school year.
- Provides that no school employee may be reprimanded or dismissed for acting, or failing to act to stop or intervene, in an altercation between students if the employee's actions are consistent with local board policies, and requires local boards of education to adopt such policies. This provision applies beginning with the 2012-2013 school year.
- Limits requirement for reporting certain criminal acts to law enforcement to those of whom a principal has personal knowledge or actual notice and removes discretionary disciplinary authority for willful failure to report, which is provided for in another statute.

### **Cyberbullying. –**

- Creates a new offense of cyber-bullying of a school employee, a Class 2 misdemeanor, by doing any of the following with the intent to intimidate or torment a school employee: building a fake profile or Web site; posting or encouraging others to post private, personal, or sexual information pertaining to a school employee; posting a real or doctored image of the employee; accessing, altering, or erasing any computer network, data, program, or software, including breaking into a password-protected account, or stealing or otherwise accessing passwords; and using a computer system for repeated, continuing, or sustained communications to a school employee.
- Makes other conduct unlawful, including the dissemination of unauthorized copies of data, and signing up a school employee for a pornographic site or electronic mailing lists.
- Provides for diversion programs which would allow for dismissal of charges without an adjudication of guilt or juvenile delinquency.
- Provides for the transfer of a student who has engaged in cyber-bullying of a school employee to a different school in the local school administrative unit, and if that is not possible, requires assignment of the student to a different class from the victim. The superintendent may modify the required transfer, in writing, on a case-by-case basis. This provision becomes effective December, 2012 and applies to offenses committed on or after that date.

Except as otherwise provided, this act became effective July 12, 2012. (HAP)

## Sale of a Minor/Felony Offense

S.L. 2012-153 ([SB 910](#)) creates a new criminal offense for the unlawful sale, surrender, or purchase of a minor. The offense is a Class F felony with a minimum fine of \$5,000 for a first offense and \$10,000 for a second or subsequent offense. The offense does not apply to actions that are ordered by a court, authorized by statute, or are otherwise lawful. Upon conviction for the offense, the court must consider whether the person is a danger to the community and whether requiring the person to register as a sex offender furthers the purpose of the sex offender registration requirement; if the court so finds, then it must order the person to register as a sex offender.

Corresponding changes are made to other statutes to provide that a minor whose parent has committed this offense is an abused juvenile and to clarify that a person surrendering an infant under the "safe baby" statute is not in violation of this offense.

The Conference of District Attorneys must conduct a study of additional measures that may be taken to stop criminal activity involving the sale of children and submit a final written report of its findings and recommendations to the General Assembly by January 30, 2013. This provision became effective July 12, 2012.

In addition, this act makes the following changes, which become effective October 1, 2012:

- Clarifies that the Department of Health and Human Services Division of Social Services (Division) is required to disclose a child abuse reporter's identity to federal, State, or local government entities or their agents with a court order, or without a court order when the entity demonstrates a need for identity information in order to perform its mandated duties.
- Requires the Division to keep a register of all licensed family and therapeutic foster homes, not just licensure applicants, and makes conforming changes as to what information the register must include. The Division may withhold any specific information about a foster parent if the release of the information would likely pose a health or safety risk to the foster parent or child. Anyone denied access to the information would have the right to seek a court order compelling disclosure.

Except as otherwise indicated above, this act becomes effective December 1, 2012, and applies to offenses occurring on or after that date. (SLS)

## Habitual Misdemeanor Larceny

S.L. 2012-154 ([HB 54](#)) makes larceny a felony, regardless of the value of the property stolen, if the defendant has had four prior larceny convictions – either felonies or misdemeanors. Convictions that occurred during the same week of district or superior court count as one conviction, except for offenses that occurred in separate counties. A conviction is not included in the number of prior convictions unless the defendant was represented by counsel, or waived counsel at first appearance, or otherwise prior to trial or plea.

This act becomes effective December 1, 2012, and applies to offenses occurring on or after that date. (HAP)

## Increase Penalties/Murder and Driving While Impaired Deaths

S.L. 2012-165 ([SB 105](#)) increases the penalty level for certain crimes as follows:

**Second Degree Murder.** – Currently, all second degree murders are classified as Class B2 felonies. The act divides second degree murders into two categories, with the indicated penalties:

- *Class B1.* – Murders where there is a showing of hatred, ill will, or spite; and murders where there is a condition of mind which prompts a person intentionally to take the life of another, or intentionally inflict serious bodily injury which results in death, without just cause, excuse, or justification.
- *Class B2.* – (1) The commission of an inherently dangerous act or omission, in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief, and (2) murder proximately caused by unlawful distribution of certain drugs.

**Felony Death by Vehicle.** – The act increases the penalty for Felony Death by Vehicle from a Class E to a Class D felony and gives the court the discretion to sentence the defendant to a prison term or to an intermediate punishment, if the defendant is a first-time offender.

**Aggravated Felony Death by Vehicle.** – The act requires the court to sentence a defendant convicted of Aggravated Felony Death by Vehicle in the aggravated range for Class D offenses.

This act becomes effective December 1, 2012, and applies to offenses occurring on or after that date. (HAP)

## Law Enforcement/Various Other Changes

S.L. 2012-168 ([SB 141](#)) makes changes to a variety of statutes.

### **First Degree Trespass.** –

- This act makes first degree trespass a Class A1 misdemeanor when the trespass occurs on the premises of certain types of critical infrastructure and the person actually entered a building, or it was necessary for the person to climb over, go under, or otherwise surmount a fence or other barrier to reach the facility. The offense is raised to a Class H felony if the violation also includes either the intent to disrupt the normal operation of the facility or an act that places either the offender or others on the premises at risk of serious bodily injury.
- Critical infrastructure is described as certain electric power generating or transmitting facilities or stations owned or operated by an electric power supplier; various public water system facilities; and various types of liquefied natural gas storage or propane-air facilities.

This provision became effective September 1, 2012, and applies to offenses committed on or after that date.

**Motions for Appropriate Relief (MAR).** – This act makes various changes to the MAR statutes as follows:

- Continues to provide that only the trial judge is empowered to consider a MAR filed under G.S. 15A-1414 (filed within 10 days of verdict), unless that judge is unavailable, but clarifies that if the trial judge is unavailable, the senior resident superior court judge (Senior Resident) or chief district court judge (Chief) must assign the MAR to any judge authorized to act in criminal court in the district in which the MAR is filed.
- Provides that a judge may consider a MAR filed under G.S. 15A-1415 only if assigned to do so by the Senior Resident or Chief.
- Provides that all MARs must be referred to either the Senior Resident or Chief for assignment. A MAR filed under G.S. 15A-1414 must be assigned to the original trial judge.
- Makes changes to the procedure and time requirements for MARs in noncapital cases as follows:
  - Requires the clerk to place MARs on the criminal docket and promptly refer them to the Senior Resident or Chief for assignment.
  - Creates a time frame within which a MAR must be assigned, an initial review completed, a hearing calendared, and a ruling on the motion entered. An

extension of time, not to exceed 30 days, may be granted to comply with any deadline set out in the time frame, but no subsequent request to extend the deadline must be granted without a written order containing detailed findings of extraordinary circumstances. The Senior Resident or Chief also may grant an extension of time to a judge assigned to consider a MAR to comply with a deadline, but no subsequent extension may be granted without a written order containing detailed findings of extraordinary circumstances.

- Provides that failure of the court to comply with the deadlines is grounds for the party filing the MAR to petition the Senior Resident or Chief for reassignment of the MAR and entitles the party to seek a writ of mandamus to obtain compliance with the deadline.
- Provides that failure to meet a deadline imposed under this act is not a ground for the summary granting of a MAR or other summary relief, including release of the prisoner.
- The time frame established is as follows:
  - Assignment by Senior Resident/Chief must be within 30 days of filing of MAR.
  - Initial review must be completed by assigned judge within 30 days after assignment. Initial review must address specific issues, including calendaring a hearing.
  - Evidentiary hearing must be held within 90 days of the issuance of the initial review order, unless the State must file an answer, then within 150 days.
  - Non-evidentiary hearing must be held within 60 days of initial review order, unless State must file an answer, then within 120 days.
  - Notice of hearing must be given no less than 5 days prior to date of hearing.
  - Ruling on MAR must be made within 60 days of conclusion of hearing.
- Extends the hearing deadlines by 60 days if the court determines that counsel must be appointed.

These provisions become effective December 1, 2012, and apply to MARs pending and for which no answer has been filed, or filed on or after that date.

**Civil License Revocation for Provisional Licensees Charged with Criminal Moving Violations.** – This act makes changes to the civil license revocation procedure for provisional licensees charged with criminal moving violations as follows:

- Gives discretion back to law enforcement officers on whether to arrest the provisional licensee or issue a citation for the offense. Prior law required that the provisional licensee be taken into custody.
- Amends the procedure for issuance of the 30-day civil license revocation to allow for the possibility that the law enforcement officer may choose to issue a citation and to provide for appeal of the revocation.

These provisions become effective October 1, 2012, and apply to offenses committed on or after that date.

**Payable on Death Accounts.** – This act amends legislation enacted in 2011 relating to payable on death accounts to clarify that the procedure for establishing a payable on death account was not changed by that legislation.

**Department of Public Safety (DPS) Research and Planning Section and Reentry.** – This act eliminates the current research and planning section in the Division of Adult Correction of DPS and creates a Research and Planning Section (Section) in the Division of Administration of DPS, which will be the single State agency responsible for the coordination and implementation of ex-offender reentry initiatives. The Section is directed to continue its efforts to assist offenders in successfully reentering society.

**Extend Accreditation of Forensic Science Labs.** – In 2011, legislation was enacted requiring any lab that performs forensic analysis to be accredited to a certain standard. Local and private labs, other than the North Carolina State Crime Laboratory, were given until October 1,

2012, to comply with the accreditation requirement. This act extends the accreditation deadline for local and private labs to July 1, 2013.

Except as otherwise indicated above, this act became effective July 12, 2012. (SLS)

## **Justice Reinvestment Clarifications**

S.L. 2012-188 ([HB 1021](#)). See **Courts, Justice, and Corrections**.

## **Expunction/Nonviolent Offenses**

S.L. 2012-191 ([HB 1023](#)). See **Courts, Justice, and Corrections**.

## Chapter 6 Education

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

### **Enacted Legislation**

#### **Public Schools**

##### **No Dues Check-off for School Employees**

S.L. 2012-1 ([SB 727](#)) eliminates payroll deductions to an employees' association for employees of local boards of education and retirement benefit deductions to associations with a majority of public school employees.

The bill was ratified June 9, 2011, and vetoed by the Governor on June 18, 2011. The Senate overrode the veto on July 13, 2011, and the House of Representatives overrode the veto on January 5, 2012.

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

##### **Teacher Prepayment**

S.L. 2012-13, Sec. 1 ([HB 966](#), Sec. 1) repeals the prohibition on teacher prepayment which was scheduled to become effective July 1, 2012. This section allows prepayment to continue as implemented by local boards of education in accordance with applicable law.

This section became effective July 1, 2012. (PP)

##### **Community Colleges/Opt Out of Federal Loan Program**

S.L. 2012-31 ([HB 7](#)) allows 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 community college adopts a resolution declining to participate in the Program. A board of trustees adopting such a resolution may later rescind the resolution and participate in the Program, but cannot decline participation in the Program for a second time.

The State Board of Community Colleges must ensure that all community colleges have at least one counselor to inform students about available federal programs and funds, but only counselors at colleges participating in the Program are required to inform students about that Program.

The bill was ratified April 5, 2011, and vetoed by the Governor on April 13, 2011. The House of Representatives and the Senate overrode the Governor's veto on June 18, 2012.

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

##### **An Act to Improve Public Education**

S.L. 2012-77 ([SB 724](#)), as amended by S.L. 2012-194, Sec. 52 ([SB 847](#), Sec. 52), makes the following changes to the education laws:

- Directs the State Board of Education (SBE) to ensure that students preparing to teach elementary school through teacher education programs and lateral entry programs:

- Have adequate courses in the teaching of reading and mathematics.
  - Are tested prior to certification to determine if they have the required knowledge in scientifically-based reading and mathematics instruction.
  - Continue to receive preparation in applying formative and summative assessments through technology-based assessment systems.
  - Are prepared to integrate arts education across the curriculum.
- Requires school improvement teams to use student data to make informed decisions about student course placement in classes such as Algebra I.
  - Mandates that local boards of education create transition plans and transition teams for at-risk students to help them transition from elementary to middle school and from middle to high school.
  - Provides that if a student's school report card contains all of the information required in a personal education plan, then no further personal education plan is required for the student.
  - Removes the sunset of a provision that a local educational agency is deemed to have a "basis of knowledge" that a child is a child with a disability if, prior to the behavior that precipitated the disciplinary action, the behavior and performance of the child clearly and convincingly establishes the need for special education.
  - Directs the SBE to study the high school graduation requirements for students who do not plan to continue education beyond high school, including implementing a five-year program graduation requirement. This study must be reported to the Joint Legislative Education Oversight Committee (JLEOC) by March 15, 2013.
  - Directs the SBE to implement the statewide education reform initiatives set forth in the federal Race to the Top application and report to the JLEOC by September 15, 2012, and semiannually until September 15, 2014.
- This act became effective June 26, 2012. (DC)

## **Simplify Beverage Contract Bids**

S.L. 2012-89 ([HB 1096](#)) repeals the requirement that contracts for the sale of juice or bottled water in local school administrative units, community colleges, and constituent institutions of The University of North Carolina must be bid separately from each other and separately from any other contract.

This act became effective June 28, 2012. (SK)

## **North Carolina Longitudinal Data System**

S.L. 2012-133 ([HB 964](#)) establishes a Longitudinal Data System (System) containing student and workforce data and a governing board for that System. The purpose of the System is to facilitate and enable exchange of student data among agencies, generate timely and accurate information to improve the education system and guide decision making, and facilitate and enable linkage of student data and workforce data. The linkage of data is limited to the later of five years after the student completes secondary education or five years after last enrollment in post-secondary education.

The North Carolina Longitudinal Data System Board (Board) is composed of 18 members. The powers and duties of the Board include developing and providing oversight and budget approval for the System and establishing policies and security plans to comply with privacy laws. The Board will review research requirements, set policies for approval of data requests, and establish an advisory committee on data quality. The Board will report annually on the progress of the System to the Joint Legislative Education Oversight Committee (JLEOC).

The System is located administratively in the Department of Public Instruction and will be used to examine student progress and outcomes over time. The System will serve as a data



broker for the various agencies, ensure compliance with State and federal privacy laws, fulfill approved data requests, and develop a process to fulfill data requests from the General Assembly and the Governor. Limits are placed on access and use of data to ensure compliance with privacy laws. System funding can be received through appropriations, grants, or other contributions.

Local school administrative units (LEAs), charter schools, community colleges, constituent institutions of The University of North Carolina (UNC), and State agencies are required to comply with data requirements and timelines established for the System, and to transfer student and workforce data in accordance with the Board's data security and safeguarding plan. Nonpublic schools, private colleges and universities, and the North Carolina Independent Colleges and Universities (NCICU) also may transfer data in accordance with the data security and safeguarding plan. No State agency is required to submit data prior to January 1, 2015, unless it has received sufficient grant funding or appropriations to support participation in the System.

Appointments to the Board must be made by August 1, 2012. The System must be fully operational by July 1, 2014. A report must be made to the JLEOC on privacy and data security plans prior to incorporating individual data. A report also must be made to the JLEOC on the efficiency, effectiveness, and cost in structuring the System as a federated data system or a centralized data warehouse, and on technical capabilities and costs identified for each entity to enable data sharing by January 15, 2013.

A nonpublic K-12 school, private college or university, or the NCICU will not be liable for a breach of confidentiality, disclosure, use, retention, or destruction (breach) of student data or records if:

- The data or record was disclosed according to the terms of a written agreement with a State agency, LEA, community college, constituent institution of UNC, or the NCICU in compliance with the federal Family Educational Rights and Privacy Act.
- The breach resulted from the actions of the State agency, LEA, community college, constituent institution of UNC, or a person provided access to the data or records by those entities.

This act became effective June 29, 2012. (PP)

## **School Improvement Plans at Residential Schools**

S.L. 2012-142, Sec. 7.3 ([HB 950](#), Sec. 7.3) directs each of the State residential schools (the Eastern North Carolina School for the Deaf, the Governor Morehead School for the Blind, and the North Carolina School for the Deaf) to develop a school improvement plan (SIP). The SIP must include an annual performance goal set by the State Board of Education (SBE) and a plan to improve student performance. The SIP is developed by a team composed of the school's principal, instructional and residential life personnel, and at least five parents of students residing at the school.

SIPs must be data driven and include strategies for improving student performance, such as providing staff development, notifying parents of their student's reading difficulties, encouraging parent involvement, ensuring school safety, and providing effective instructional practices. SIPs are voted upon and approved by the majority of instructional personnel at the school and then presented to the SBE. The SBE may reject the SIP and instruct a residential school on how to develop another plan, or the SBE may write a SIP for the residential school. The SIP remains in effect for three years, but may be amended as often as needed. The SBE may make funds available for a residential school to implement a SIP and must provide a list of recommended strategies to establish parental involvement programs. SIPs must be accessible to parents and the school community.

This section became effective July 1, 2012. (PP)

## **School Calendar Pilot Program**

S.L. 2012-142, Sec. 7.4 ([HB 950](#), Sec. 7.4) continues the school calendar pilot program in the Wilkes County Public Schools, Montgomery County Public Schools, and Stanly County Public Schools. The pilot program allows participating local school administrative units to operate a school calendar with either a minimum of 185 days or 1,025 hours of instruction covering at least 9 calendar months.

The State Board of Education must report to the Joint Legislative Education Oversight Committee by March 15, 2013, on the administration of the pilot, cost savings, and impact on student achievement.

This section became effective July 1, 2012. (SK)

## **Liability Insurance for Public School Personnel**

S.L. 2012-142, Sec. 7.9 ([HB 950](#), Sec. 7.9) requires local school administrative units (LEAs) to provide written notification to all public school employees about their coverage under the State-funded liability insurance policy for North Carolina public school employees. The notification must include policy coverage details, instructions on reporting claims, contact information, and instructions on obtaining a copy of the policy. The Department of Public Instruction must distribute additional funds to the LEAs from funds available for liability insurance for public school personnel to implement the notification requirements.

This section became effective July 1, 2012. (DC)

## **Pilot Cooperative Innovative High School**

S.L. 2012-142, Sec. 7.10 ([HB 950](#), Sec. 7.10) requires the State Board of Education to approve the establishment of a cooperative innovative high school pilot by the local boards of education of Davidson County Schools, Thomasville City Schools, and Lexington City Schools, and the local boards of trustees of Davidson County Community College. The pilot will be known as the Yadkin Valley Regional Career Academy.

This section became effective July 1, 2012. (KM)

## **Clarifying Cooperative Innovative High School Statutes**

S.L. 2012-142, Sec. 7.11 ([HB 950](#), Sec. 7.11) clarifies the application process to establish a cooperative innovative high school (CIHS) program by requiring a proposed budget for the first five years of implementation, including requests for use of additional funds, and costs of budget full-time equivalent (FTE) for a CIHS partnered with a community college.

The section establishes a new approval process for applications through review by a joint advisory committee appointed by the State Board of Education (SBE) and the local governing Board of the local board of trustees. The joint advisory committee must review the application to ensure that all requirements and appropriate purposes have been met, and indicate if additional funds have been requested in the application. If no additional funds are requested, the SBE and the governing Board may grant approval of the application by June 30 of each year, and no additional State funds will be granted to a CIHS approved in this manner. If additional funds are requested in the application, the SBE and the governing Board may approve the application contingent upon funds appropriated by the General Assembly by April 1 of each year. Contingent approval will expire if no appropriation is made by the General Assembly within one calendar year, and the CIHS cannot open. A revised application may be submitted requesting no additional funds.

Students in a CIHS cannot be charged tuition for courses taken through the partner institution of higher education. Students in a CIHS with a community college partner approved

with an appropriation from the General Assembly are included in calculations for budget FTE. CIHSs approved without additional funds are not included in the budget FTE calculation. The SBE must reimburse The University of North Carolina (UNC) and private North Carolina colleges for tuition for courses taken by students at a CIHS with a UNC constituent institution or private college partner, if the CIHS was approved with an appropriation from the General Assembly. For a CIHS with a UNC partner, the tuition payment must not exceed the annual Board of Governors (BOG) approved rate and must not include fees. For a CIHS with a private college partner, the tuition payment must not exceed the highest undergraduate BOG-approved rate and must not include fees. The CIHS student's credit hours are nonrefundable. The SBE will not reimburse UNC or a private college for tuition for courses for students at a CIHS approved without additional funds.

This section became effective on July 1, 2012. (PP)

## **Teacher/Teacher Assistant Leave on Instructional Days**

S.L. 2012-142, Sec. 7.14 ([HB 950](#), Sec. 7.14) allows local boards of education to adopt policies that permit 11- or 12-month instructional employees in year-round schools to take vacation leave on days when students are in attendance. The principal must approve the vacation leave, and local funds must be used to cover the cost of any substitute teachers.

This section became effective July 1, 2012, and applies beginning with the 2012-2013 school year. (SK)

## **Investing in Innovation Grant**

S.L. 2012-142, Sec. 7.17 ([HB 950](#), Sec. 7.17) allows certain local school administrative units (LEAs) to offer one community college course to 10th grade students. The participating LEAs are: Alleghany, Beaufort, Hertford, Jones, Madison, Richmond, Rutherford, Sampson, Surry, Wilkes, and Yancey County Schools. These LEAs are a part of the federal Investing in Innovation Fund Grant: Validating Early College Strategies for Traditional Comprehensive High Schools (Grant), which was awarded to the North Carolina New Schools Project (NCNSP) for 2012-2017.

The Grant funds will pay for costs incurred by the LEAs and the community college partners, including community college tuition costs. Community colleges cannot earn budget full-time equivalent for student course enrollments supported with the Grant. The NCNSP must report on the implementation of the Grant to the State Board of Education, the State Board of Community Colleges, the Office of the Governor, and the Joint Legislative Education Oversight Committee by March 15, 2013, and annually thereafter until the end of the Grant period.

This section became effective July 1, 2012. (DC)

## **Improve K-3 Literacy**

S.L. 2012-142, Sec. 7A.1 ([HB 950](#), Sec. 7A.1) creates the North Carolina Read to Achieve Program (Program) to ensure that all children read at or above grade level by third grade through early identification and services for reading difficulties, increased parental notification of academic need and progress, and grade promotion based partly on reading proficiency. The Program requires the following:

- The State Board of Education (SBE) must develop and implement a comprehensive reading achievement plan and report biennially on the plan and recommended changes to the Joint Legislative Education Oversight Committee (JLEOC) beginning October 1, 2012.
- Within 30 days of enrollment, developmental assessments of kindergarten students must be conducted, and within 60 days of enrollment kindergarten entry assessments must be completed. Assessment results must be used to inform

instruction, reduce the achievement gap, and improve the early childhood system. Diagnostic and formative assessments must be used for K-3 students to determine difficulty with reading development, and difficulties must be addressed with instructional supports and services. Identification of students who are at risk of academic failure and not progressing toward grade promotion must begin in kindergarten.

- A student who fails to demonstrate third grade reading proficiency on a State-approved standardized test of reading comprehension must be retained in third grade, unless the student meets one of certain good cause exemptions to the retention requirement. Exemptions include limited English proficiency, disability, demonstrated proficiency on alternative measures, or multiple retentions. Retained students must be enrolled in summer reading camps, and may be promoted upon a showing of reading proficiency on an alternative assessment following the camp. Students not demonstrating proficiency must be retained and provided with a successful reading teacher in an accelerated or transitional classroom where specific reading instruction takes place. Students demonstrating reading proficiency by November 1 may be promoted midyear under a policy developed by the SBE. Parents of retained students must be provided with reading training and supplemental tutoring for the student. Parents must be notified of third grade retention policies, and must be given monthly written reports regarding student progress for retained students.
- Local boards of education must annually report to the SBE and publish on their websites information about numbers and percentages of third graders demonstrating reading proficiency, retained, or exempt from retention for good cause. The SBE must report the information to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the JLEOC by October 1, beginning with the 2014-2015 school year.
- Charter schools must retain in third grade a student who fails to demonstrate third grade reading proficiency on a State-approved test of reading comprehension unless the student meets a good cause exemption, must provide notice to parents on retention and reading interventions, and must annually publish on their websites and report to the SBE statistics on reading proficiency, retention, and good cause exceptions.

This section became effective July 1, 2012, and applies beginning with the 2013-2014 school year. The developmental screening and kindergarten entry assessment will be administered beginning with the 2014-2015 school year. (KM)

## **School Performance Grades**

S.L. 2012-142, Sec. 7A.3 ([HB 950](#), Sec. 7A.3) directs the State Board of Education (SBE) to award an overall numerical school performance score on a scale of zero to 100 with a corresponding letter grade of A, B, C, D, or F earned by each school within the local school administrative unit (LEA). The letter and numerical score will be reported with the annual "report card" and reflects student performance on annual subject-specific assessments, college and workplace readiness scores, and graduation rates. Separate scores and grades for reading and math performance must be reported in schools serving children in any grades kindergarten through eighth. The annual "report card" also must include the number and percentage of third grade students who take and pass the alternative reading comprehension assessment, those retained for not demonstrating reading proficiency, and those obtaining a good cause exemption from mandatory retention. School performance scores and grades must be posted on each LEA's website. Local boards of education must inform parents in writing when their student's school receives a grade of "D" or "F". These provisions apply to traditional public schools, public charter schools, and regional schools.

The SBE must report annually to the Joint Legislative Education Oversight Committee by January 15 on recommended adjustments to the school performance grade elements and scale. The General Assembly intends to add a student growth component to school performance grades.

This section became effective July 1, 2012, and applies beginning with the 2012-2013 school year. (PP)

## **Establish North Carolina Teacher Corps**

S.L. 2012-142, Sec. 7A.7 ([HB 950](#), Sec. 7A.7) establishes the North Carolina Teacher Corps (Teacher Corps) to recruit and place recent graduates and mid-career professionals as teachers in high needs public schools. The State Board of Education (SBE), in consultation with the Board of Governors of The University of North Carolina (BOG) and the North Carolina Independent Colleges and Universities, will develop and administer the Teacher Corps. The SBE must establish the application criteria, including a bachelor's degree from an accredited college or university. The SBE may create a committee to annually select candidates for admission to the program. The SBE must identify high needs schools in local school administrative units with teacher shortages and coordinate placement of Teacher Corps members in those schools. The SBE, in cooperation with the BOG, must: (1) develop an intensive summer training institute and (2) provide ongoing coaching, mentoring, and continued professional development for Teacher Corps members. Teacher Corps members must be granted lateral entry teaching licenses.

This section became effective July 1, 2012. The SBE must recruit and place the first cohort of Teacher Corps members no later than the 2012-2013 school year. (SK)

## **Pay for Excellence**

S.L. 2012-142, Sec. 7A.10 ([HB 950](#), Sec. 7A.10) provides that each local board of education may develop a plan of performance pay for all licensed personnel. Under the performance pay plan, the licensed employees must be eligible to receive bonuses or adjustments to base salary for meeting certain performance criteria. These criteria must include, but are not limited to, the following:

- Annual growth in achievement for the students assigned to a teacher's classroom, when applicable.
- Annual growth in achievement for the students assigned to a specific school.
- Assignment of additional academic responsibilities.
- Assignment to a hard-to-staff school or subject area.

Local boards of education that decide to develop performance pay plans must submit the plans to the State Board of Education (SBE) by March 1, 2013. The SBE must report on these plans and the achievement-based compensation models developed as a part of the federal Race to the Top grant to the Fiscal Research Division, the Joint Legislative Commission on Governmental Operations, and the House and Senate Subcommittees on Education Appropriations by April 15, 2013. Members of the public also may submit performance pay plans to these entities by April 15, 2013.

This section became effective July 1, 2012. (DC)

## **School Calendar**

S.L. 2012-142, Sec. 7A.11 ([HB 950](#), Sec. 7A.11), as amended by S.L. 2012-145, Sec. 2.5 ([SB 187](#), Sec. 2.5), requires that school calendars include a minimum of 185 days or 1,025 hours of instruction, and eliminates the authority of the State Board of Education (SBE) to grant a waiver for up to five instructional days to be used as teacher workdays.

The section also provides that opening dates for students cannot be earlier than the Monday closest to August 26, and the closing dates cannot be later than the Friday closest to June 11. On a showing of good cause, the SBE may allow a local board of education to set an opening date no earlier than the Monday closest to August 19. The SBE may grant good cause waivers from the opening and closing dates for weather only when schools were closed for eight full days per year during any four of the last ten years. The SBE's authority to grant calendar waivers for educational purposes is eliminated. The section clarifies that cooperative innovative high schools are not subject to the general calendar law.

This section became effective July 1, 2012, and applies beginning with the 2013-2014 school year. (KM)

## **"Read NC" Early Literacy Initiative/Development Officers/ Assistance to Rural Partnerships**

S.L. 2012-142, Sec. 10.4 ([HB 950](#), Sec. 10.4). See **Health and Human Services**.

## **School Violence Prevention Act**

S.L. 2012-149 ([SB 707](#)), as amended by S.L. 2012-194, Sec. 45(e) ([SB 847](#), Sec. 45(e)). See **Criminal Law and Procedure**.

## **Equal Access for All Employee Education Associations**

S.L. 2012-179 ([SB 755](#)) ensures that all education employee associations (EEAs) have equal access to school employees and that one association not be favored or endorsed over another. The act prohibits any local school administrative unit (LEA) or individual school, including charter schools, from doing any of the following:

- Granting access to employees' physical or electronic mailboxes to an EEA unless it gives such access to all EEAs operating in that LEA.
- Permitting an EEA to attend new teacher or employee orientations to recruit members unless it permits all EEAs operating in the LEA to attend.
- Giving an EEA preferential treatment through procedures, policies, or any other means. No payroll deductions can be given to any EEA unless such deduction is authorized in statute for that EEA.
- Endorsing one EEA over another.
- Referring to days or breaks in a school calendar by the name of an EEA.

Schools are not allowed to discourage or prohibit an employee from joining an organization or showing preferences toward any EEA.

This act became effective on July 12, 2012, and applies beginning with the 2012-2013 school year. (PP)

## **Students of Military Families**

S.L. 2012-194, Sec. 55 ([SB 847](#), Sec. 55) repeals annual reporting requirements by local boards of education (local boards) and the State Board of Education (SBE) on information related to the number of and services provided to students with immediate family members serving in the military, and instead requires local boards to report on this information by November 30, 2012, to the SBE. The SBE must report this information to the Joint Legislative Education Oversight Committee and to the House of Representatives and Senate Appropriations Subcommittees on Education by December 15, 2012. Principals also must develop ways for

identifying and serving the unique needs of students with family members serving in the armed forces.

This section became effective July 17, 2012. (KM)

## **Completion of Cardiopulmonary Resuscitation by Students Required**

S.L. 2012-197 ([HB 837](#)), as amended by S.L. 2012-194, Sec. 71.8 ([SB 847](#), Sec. 71.8), makes successful completion of Cardiopulmonary Resuscitation (CPR) training a high school graduation requirement beginning with the 2014-2015 school year, and requires schools to maintain documentation of successful student completion of CPR training.

The State Board of Education (SBE) must work with the American Heart Association, the American Red Cross, and other nationally recognized programs in developing a plan to phase in the graduation requirement, including costs, documentation procedures, and options for alternate completion. The SBE must report on the plan to the Joint Legislative Education Oversight Committee by December 15, 2013, and on the implementation of the plan by October 15, 2015.

This act became effective July 26, 2012, and applies beginning with the 2012-2013 school year. (KM)

## **Community Colleges**

### **Update College Performance Measures**

S.L. 2012-142, Sec. 8.5 ([HB 950](#), Sec. 8.5) directs the State Board of Community Colleges to create new accountability measures and performance measures for the Community College system, including passing rates for General Education Development diploma examinations, success rates of developmental students in subsequent college-level English and math courses, progress of first-year curriculum students, and passing rates for licensure and certification examinations. Survey results are no longer included as a performance standard. Colleges can no longer carry forward 1/4 of 1% of General Fund appropriations for demonstration of improvement on a standard that has been in use for 3 years or less. A college will be deemed to have achieved exceptional institutional performance if it succeeds on all eight mandatory performance measures. Institutions achieving this status may receive a share of recognition funds based on total full-time equivalent students served at the college.

This section became effective on July 1, 2012. (PP)

### **Gateway to College Pilot at Durham Technical Community College**

S.L. 2012-142, Sec. 8.7 ([HB 950](#), Sec. 8.7) requires the State Board of Education and the State Board of Community Colleges (SBCC) to approve the Gateway to College program at Durham Technical Community College (Durham Tech) as a Career and College pathway pilot program. The pilot will concurrently provide high school and community college education to high school dropouts. The SBCC must include curriculum coursework, including developmental coursework, when computing the budget full-time equivalent for Durham Tech in fiscal year 2012-2013. Durham Tech is required to report to the House and Senate Education Appropriations Subcommittees by March 1, 2013, on student outcomes and actual costs, including administrative expenses incurred by the Durham Public Schools and Durham Tech.

This section became effective July 1, 2012. (SK)

## **Community College Tuition Waiver**

S.L. 2012-142, Sec. 8.8 ([HB 950](#), Sec. 8.8) provides for tuition and registration fee waivers requested by the following entities for community college courses that support the organizations' training needs and are on a specialized course list approved by the State Board of Community Colleges:

- Law enforcement, fire, Emergency Medical Service (EMS), or rescue and lifesaving entities serving a lake authority created by a county board of commissioners prior to July 1, 2012.
- The Eastern Band of Cherokee Indians law enforcement, fire, EMS, or rescue and lifesaving tribal government departments or programs.

This section became effective July 1, 2012. (KM)

## **Increase Maximum Parking Fine**

S.L. 2012-142, Sec. 8.9 ([HB 950](#), Sec. 8.9) authorizes the boards of trustees of local community colleges to increase the maximum fines for violations of parking and traffic rules, regulations, and ordinances on community college campuses. The maximum fines were increased from \$5 to \$25. This section also provides that the clear proceeds of civil penalties collected for violations of the parking and traffic rules, regulations, and ordinances must be remitted to the Civil Penalty and Forfeiture Fund.

This section became effective July 1, 2012. (DC)

## **Powers of the State Board of Proprietary Schools**

S.L. 2012-142, Sec. 8.9A ([HB 950](#), Sec. 8.9A) provides certain powers to the State Board of Proprietary Schools (Board), including the powers of a body corporate, the authority to lease and rent property, the power to establish an office for the transaction of business, and the authority to pay for costs and expenses of the Board from the Commercial Education Fund.

The act also provides that the State Personnel Act does not apply to employees of the Office of Proprietary Schools.

This section became effective July 1, 2012. (KM)

# **Universities**

## **University of North Carolina Student Fees/Institutional Trust Funds**

S.L. 2012-142, Sec. 9.9 ([HB 950](#), Sec. 9.9) provides that student fees previously approved by the Board of Governors of The University of North Carolina (UNC) and collected by a UNC constituent institution must go into the institutional trust fund. The trust funds and investment earnings can be used by each institution without further authorization from the General Assembly.

This section became effective July 1, 2012. (SK)

## **University of North Carolina Acquisition and Disposition of Real Property**

S.L. 2012-142, Sec. 9.10 ([HB 950](#), Sec. 9.10) allows the Board of Governors of The University of North Carolina (BOG) to authorize The University of North Carolina General



Administration (UNC-GA) and the constituent institutions of The University of North Carolina to lease out real property if the lease is for a term of not more than ten years. The BOG must adopt a policy on the disposition of real property by lease. After disposing of an interest in real property by lease, UNC-GA must file a report concerning the disposition to the Secretary of the Department of Administration. This section also provides that the disposition by easement, lease, or rental agreement of space in a building on the Kannapolis Research Campus made for ten years or less does not require the approval of the Governor and the Council of State and is exempt from the oversight of the Department of Administration and the general laws regarding the disposition of the State's property.

The BOG must report by September 1, 2014, to the Joint Legislative Commission on Governmental Operations on the following:

- How often the constituent institutions and the UNC-GA used the authority granted to them to dispose of real property by lease.
- The types of real properties that were disposed of by lease under the authority.
- An analysis and evaluation of any effects the authorization for the disposition of real property by lease has made with regard to the overall efficiency of real estate management by the constituent institutions and the UNC-GA.

This section became effective July 1, 2012, and expires on June 30, 2015. (DC)

## **Liability Insurance**

S.L. 2012-142, Sec. 9.15 ([HB 950](#), Sec. 9.15) creates a new power for the Board of Governors (BOG) of The University of North Carolina (UNC) to authorize the President of UNC to purchase liability insurance for UNC, the BOG, boards of trustees, other administrative or oversight boards, the President, and the UNC benefit plan administrators and employees. Members of the BOG, boards of trustees, other administrative boards, and UNC employees are employees for the purposes of State law governing tort claims against State departments and agencies and defense of State employees in certain court actions, however portions of the law do not apply if the President purchases liability insurance in excess of \$150,000 per claim. The purchase of insurance should not be construed to waive sovereign immunity or other available defenses, to alter or expand limits on claims or payments on tort claims against the State, or to limit the right to defense by the State.

This section became effective July 1, 2012. (KM)

## **Special Responsibility Constituent Institutions-Audit**

S.L. 2012-142, Sec. 17.2 ([HB 950](#), Sec. 17.2) provides that contracts for services of annual audits of special responsibility constituent institutions may be entered for a term up to three years in duration.

This act became effective July 1, 2012. (PP)

## **Modify University of North Carolina Health Care System Board**

S.L. 2012-174 ([HB 1073](#)) restructures the board of directors of the University of North Carolina Health Care System. Effective November 1, 2012, the board will be composed of 24 members. The act specifies the number of ex officio members, the number of at-large members, and the appointment process for the initial class of at-large members.

This act became effective July 12, 2012. (SK)

## **East Carolina University (ECU) Lease Retention**

S.L. 2012-194, Sec. 67 ([SB 847](#), Sec. 67) requires that the proceeds from the lease of lands or facilities owned or controlled by ECU's Division of Health Services must be retained by ECU to improve access to patient care.

This section became effective July 17, 2012. (SK)

## **East Carolina University (ECU) Debt Collection**

S.L. 2012-194, Sec. 68 ([SB 847](#), Sec. 68) grants ECU's Division of Health Sciences the same exemptions as the University of North Carolina Health Care System concerning debt collection. For example, individuals whose salaries are paid from State funds do not have to be terminated if they owe money to ECU for health care services. Amounts owed by patients to ECU are no longer required to be turned over to the Attorney General for collection but may be referred. In addition, ECU is not required to charge interest and penalties owed to it for health care services.

This section became effective July 17, 2012. (DC)

## **Studies**

### **Referrals to Existing Commissions/Committees**

#### **Study Tuition Cost for Veterans**

S.L. 2012-142, Sec. 9.1 ([HB 950](#), Sec. 9.1) directs the Joint Legislative Education Oversight Committee (JLEOC) to study the tuition costs for veterans who enroll in North Carolina community colleges or constituent institutions of The University of North Carolina. The JLEOC must consider the following:

- Current criteria for determining whether a veteran qualifies for the in-State tuition rate and how that criteria affects veterans who qualify for federal post-9/11 GI Bill benefits as well as other veterans.
- Potential costs to the State for veterans who attend any of the State's public institutions of higher education at the in-State tuition rate and ways to limit the costs.
- Any other issues relevant to the study.

This section became effective July 1, 2012. (DC)

### **Referrals to Departments, Agencies, Etc.**

#### **Study Tuition Surcharge**

S.L. 2012-142, Sec. 9.8 ([HB 950](#), Sec. 9.8) directs the Fiscal Research Division (FRD), in cooperation with The University of North Carolina, to study the tuition surcharge on students who take more than a certain number of hours to complete their baccalaureate degree within a specific time period. This study will look at the impact of the surcharge on timely graduation and on the revenue generated by the surcharge.

The FRD will report study findings to the Joint Legislative Education Oversight Committee and to the Education Appropriations Subcommittees of the House of Representatives and of the Senate by January 1, 2013.

This section became effective July 1, 2012. (PP)



# Chapter 7

## Environment and Natural Resources, and Energy

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

### **Enacted Legislation**

#### **Air Quality**

##### **Vehicle Emissions Inspections**

S.L. 2012-199 ([HB 585](#)). See **Transportation**.

#### **Coastal Issues**

##### **Coastal Management Policies**

S.L. 2012-202 ([HB 819](#)) makes the following changes to State coastal development policy:

- Specifically sets out in the General Statutes the counties designated as constituting the coastal area.
- Establishes a process for defining rates of sea-level change for regulatory purposes and directs the Coastal Resources Commission (CRC) to study issues related to sea-level change.
- Prohibits the CRC from denying a coastal development permit for the replacement of some types of dwellings on the basis of failure to meet setback requirements under certain circumstances.
- Directs the CRC to study whether to establish a new Area of Environmental Concern for the lands and waters adjacent to the mouth of the Cape Fear River.
- Directs the CRC to study whether to amend its rules related to development of areas near inlets.

This act became effective August 3, 2012. (JH)

#### **Energy**

##### **Clean Energy and Economic Security Act**

S.L. 2012-143 ([SB 820](#)), as amended by S.L. 2012-201, Secs. 11 through 13 ([HB 953](#), Secs. 11 through 13), directs various State agencies to develop a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose. The act reconstitutes the Mining Commission as the Mining and Energy Commission (MEC), and gives the MEC authority to adopt rules necessary to administer the Oil and Gas Conservation Act (Article 27 of Chapter 113 of the General Statutes) and to make determinations and issue orders pursuant to the Oil and Gas Conservation Act. MEC and other entities are specifically directed to adopt rules no later than October 1, 2014, for all of the following purposes:

- Information and data to be submitted in association with applications for oil and gas exploration and development permits.

- Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed.
- Appropriate well construction and siting standards and limits on water use.
- Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing for that purpose.
- Prohibitions on the use of certain chemicals and constituents in hydraulic fracturing fluids and disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production.
- Installation of appropriate safety devices and development of emergency response protocols.
- Measures to mitigate impacts on infrastructure.
- Notice, record keeping, and reporting.
- Proper well closure, site reclamation, post-closure monitoring, and financial assurance.
- Stormwater control at sites and regulation of toxic air emissions from drilling operations.
- Health and safety standards for workers engaged in oil and gas operations in the State.

Aside from implementation and enforcement authority over matters specifically given to MEC and the Department of Labor, the act directs the Department of Environment and Natural Resources to enforce all other rules and laws relating to the conservation of oil and gas.

The act amends several statutes that have historically prohibited the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes, but prohibits issuance of permits for these activities until such time as the General Assembly takes subsequent legislative action to allow issuance of such permits.

The act requires MEC, in conjunction with a number of other entities, to study: (1) appropriate levels of funding and potential sources for that funding, including permit fees, bonds, taxes, and impact fees; (2) the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter; and (3) the issue of local government regulation of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose. MEC and the other entities tasked with these studies are directed to report to the Joint Legislative Commission on Energy Policy, created under the act to exercise legislative oversight over energy policy in the State, and the Environmental Review Commission on or before October 1, 2013.

Finally, the act includes a variety of provisions designed to add or enhance protections for landowners and the public in light of oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose, including, but not limited to, the following:

- Establish a presumption concerning an oil and gas developer or operator's (developer) liability for contamination of a water supply located within 5,000 feet of a wellhead that is part of the developer's activities.
- Require a developer to: (1) conduct pre-drilling testing of water supplies; (2) provide an alternate water source to persons using a water supply if the water supply is contaminated due to the developer's activities; (3) reclaim all surface property affected by the developer's operations and provide an associated bond to a surface owner; (4) conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land; and (5) make minimum royalty payments to a lessor of 12.5% of proceeds of sale of all oil or gas produced from the lessor's just and equitable share of the oil and gas in a pool.
- Require that leases for oil and gas rights include language addressing lender approval of such leases.
- Establish a seven-day right of rescission for parties to an oil and gas lease.

- Require registry of "landmen," which is defined under the act to include a person that, in the course and scope of the person's business, negotiates for the acquisition or divestiture of oil or gas rights, including the acquisition or divestiture of land or oil or gas rights for a pipeline, among other things, effective October 1, 2012.
- Require disclosure of information concerning severance of oil and gas rights to potential purchasers of residential real estate, effective October 1, 2012, and applicable to real estate transfers or dispositions occurring on or after that date.

Except as otherwise indicated, the provisions of the act pertaining to landowner protections largely became effective July 2, 2012; much of the remainder of the act became effective August 1, 2012. (JLM)

## **Clean Energy Transportation Act**

S.L. 2012-186 ([HB 177](#)) directs the State Energy Office in the Department of Commerce, in consultation with other State agencies, to create an interagency task force responsible for studying the feasibility and desirability of advancing the use of alternative fuels by State agencies. The Task Force must report the results of its study, including any recommendations, to the Joint Legislative Commission on Energy Policy on or before December 1, 2012. The act establishes the following criteria for the operation of electric vehicle charging stations at State-owned rest stops, effective March 1, 2013:

- The charging stations must be accessible by the public.
- The Department of Transportation must develop a mechanism to charge the user of the charging station a fee to recover the costs of the electricity consumed, processing fees, and operations and maintenance.

Except as otherwise provided, this act became effective July 16, 2012. (JM)

## **Environmental Health**

### **State Air Toxics Program Reforms**

S.L. 2012-91 ([HB 952](#)) provides that State Air Toxics Program rules that control emissions of toxic air pollutants will not apply to any air emission source that is subject to federal emissions standards. The Department of Environment and Natural Resources (DENR) will continue to review applications for permits for a source or facility to determine if emissions from the source or facility would present an unacceptable risk to human health. If a source or facility is found to present an unacceptable risk to human health, DENR must require the owner or operator of the source or facility to submit a permit application that eliminates the unacceptable risk to human health. The act also directs the Division of Air Quality (Division) in DENR to review the State Air Toxics Program to determine if changes may be made to reduce unnecessary regulatory burden and increase the efficient use of Division resources, while maintaining protection of public health. The Division is to report on the implementation of this act to the Environmental Review Commission no later than December 1 for the years 2012, 2013, and 2014.

This act became effective June 28, 2012. (JH)

## **Fisheries**

### **Study and Amend Fisheries Laws**

S.L. 2012-190 ([SB 821](#)) makes the following changes to State fisheries management policy:

- Makes it unlawful to take menhaden and Atlantic thread herring under certain circumstances. This prohibition becomes effective January 1, 2013, and applies to offenses committed on or after that date.
- Reduces the number of Marine Fisheries Committee Advisory Committees. This reduction became effective July 1, 2012.
- Provides that a supermajority of the Marine Fisheries Commission is required to override a recommendation of the Division of Marine Fisheries in the Department of Environment and Natural Resources regarding overfishing or rebuilding of fish stocks.
- Directs State natural resource agencies and the Department of Transportation to study fees associated with coastal fishing licenses and the numbering and titling of boats as sources of funding for dredging.
- Directs State natural resource agencies and the Commissioner of Agriculture to study the reorganization of fisheries management in the State.

Except as otherwise provided, this act became effective July 16, 2012. (JH)

## **Miscellaneous**

### **Department of Cultural Resources and Department of Environment and Natural Resources/Study State Attractions Savings**

S.L. 2012-93 ([SB 813](#)). See **State Government**.

### **Department of Environment and Natural Resources to Centralize Oversight of its Regional Offices**

S.L. 2012-142, Sec. 12.2 ([HB 950](#), Sec. 12.2) directs the Department of Environment and Natural Resources (DENR) to centralize and expand oversight of its regional offices by: (1) creating a mission statement for its regional offices; (2) expanding existing customer service performance measures, including timelines and milestones; (3) implementing a new customer survey during the 2012-2013 fiscal year and repeating it every other year; and (4) identifying best practices to be implemented across all regional offices and divisions. DENR must report its progress, findings, and recommendations pursuant to this section, as well as those from the public listening sessions DENR conducted in 2011, to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than February 1, 2013.

This section became effective July 1, 2012. (PL)

### **Transfer Geodetic Survey Section from the Department of Environment and Natural Resources to the Division of Emergency Management of the Department of Public Safety**

S.L. 2012-142, Sec. 12.4 ([HB 950](#), Sec. 12.4) transfers the Geodetic Survey Section of the Division of Land Resources, including all its statutory authority, powers, duties, and functions, from the Department of Environment and Natural Resources (DENR) to the Division of Emergency Management of the Department of Public Safety. This section makes technical and conforming changes related to the transfer and requires the Geodetic Survey Section to continue to provide services to DENR free of charge.

This section became effective July 1, 2012. (PL)



## Regulatory Reform Act of 2012

S.L. 2012-187, Secs. 11, 12, 12.1, 13, 14, and 15.1 ([SB 810](#), Secs. 11, 12, 12.1, 13, 14, and 15.1) make the following changes to State environmental policy:

- Amend the definitions that apply to a number of environmental statutes to provide that the discharge of waste into waters of the State does not include the release of air contaminants into the outdoor atmosphere.
- Repeal existing legislation that requires the Commission for Public Health (Commission) to adopt rules for the testing of new drinking water wells for the presence of certain volatile organic compounds (VOCs) and, instead, authorizes the Commission to adopt such rules if the Commission finds that testing for VOCs is necessary to protect public health.
- Exempt certain wastewater dischargers in the Jordan Lake and Falls Lake watersheds from certain water quality protection requirements unrelated to the nutrient loading problems experienced by the lakes.
- Direct the Department of Environment and Natural Resources to track and report on the processing times of all permit applications it receives under the One-Stop for Certain Environmental Permits Program and the Express Permit and Certification Reviews and to inventory all other permits, licenses, and approvals it issues.
- Delay the effective date for compliance with wading pool fencing requirements from July 1, 2012, to January 1, 2013. This provision became effective July 1, 2012.
- Direct the Commission to amend its rules governing the duration of permits for sanitary landfills and transfer stations in order to provide owners and operators of landfills and transfer stations the option for longer term permits and permit review periods.

For summaries of Changes to the 2011 Regulatory Reform Act and changes to various provisions of State law in S.L. 2012-187, see **State Government**.

Except as otherwise provided, these sections became effective July 16, 2012. (JH)

## Amend Environmental Laws 2012

S.L. 2012-200 ([SB 229](#)), as amended by S.L. 2012-194, Sec. 51 ([SB 847](#), Sec. 51), amends certain environmental and natural resources laws to:

- Direct the Environmental Management Commission (EMC) to report on stormwater capture and reuse in its annual stormwater report.
- Direct the Department of Environment and Natural Resources (DENR) to study reallocating water supply in Kerr Lake.
- Direct DENR to study degradable plastic products and their potential to contaminate recycled plastics feedstocks.
- Direct the Division of Public Health in the Department of Health and Human Services to hire staff to administer and implement the Lead-Based Paint Hazard Management Program for Renovation, Repair, and Painting.
- Provide that Type 1 solid waste compost facilities are not required to obtain a national pollutant discharge elimination system permit for the discharge of certain process wastewaters at the facility.
- Direct DENR to accept stormwater management measures, other than ponds, for stormwater control at airports.
- Provide conditions to allow for two noncontiguous properties to be treated as a single property to achieve compliance with water supply watershed programs.
- Prohibit local governments from treating any land within a riparian buffer as if the land is the property of the State or any of its subdivisions, unless acquired by one of these entities.

- Amend the Neuse and Tar-Pamlico river basin buffer rules to allow development on existing lots under certain conditions.
- Provide flexibility for the development of basinwide water quality management plans for river basins with nutrient sensitive waters.
- Delay the implementation deadline for local stormwater management programs under the Jordan Lake New Development Rule.
- Establish a variance process for certain setback distance requirements for existing private drinking water wells.
- Repeal the authority of the EMC to add counties to the Motor Vehicle Emissions Inspection Program.
- Allow the Commercial Leaking Petroleum Underground Storage Tank (UST) Cleanup Fund to be used for the removal of abandoned USTs that have not leaked but pose an imminent hazard.
- Require scrap tire collectors to verify access to a permitted scrap tire disposal site before contracting with any scrap tire processor.
- Require septage management firms to provide identification of and notice to DENR before placing a pumper truck not previously included in a permit into service.
- Amend the Marine Fisheries Commission Advisory Committees (effective July 1, 2012) and provide that a supermajority of the Marine Fisheries Commission is required to override a recommendation of the Division of Marine Fisheries regarding measures needed to end overfishing or to rebuild overfished stocks.
- Provide certain protections to galax and Venus flytrap under the Plant Protection Conservation Act (effective October 1, 2012).
- Increase the civil penalty for violations of certain rules of the Wildlife Resources Commission (effective October 1, 2012).
- Provide that funds received and allocated to the Department of Agriculture and Consumer Services in settlement of the lawsuit filed by the State against the Tennessee Valley Authority be used for environmental mitigation projects in certain counties.

Except as otherwise specified, this act became effective August 1, 2012. (JM)

## **Amend Environmental Laws 2**

S.L. 2012-201 ([HB 953](#)) changes State environmental and energy policy as follows:

- Makes clarifying, conforming, and technical amendments to various laws related to environment and natural resources.
- Delays the implementation deadline for local stormwater management programs under the Jordan Lake New Development Rule.
- Extends the reporting dates for various studies under the Clean Energy and Economic Security Act (S.L. 2012-143) from January 1, 2013, to October 1, 2013. The extensions became effective August 1, 2012.
- Lengthens the right of rescission period for oil and gas leases established by the Clean Energy and Economic Security Act (S.L. 2012-143) from three days to seven days. The change to the length of the right of rescission period became effective August 1, 2012, and applies to leases or contracts entered into on or after that date.

Except as otherwise provided, this act became effective August 1, 2012. (JH/MM)

## **Parks and Recreation**

### **Prohibit the Construction of New Piers/Satellite Areas**

S.L. 2012-142, Sec. 12.5 ([HB 950](#), Sec. 12.5) prohibits the North Carolina Aquariums Fund from being used to acquire, construct, or operate any satellite area located somewhere other than on the site of the aquariums at Pine Knoll Shores, Roanoke Island, and Fort Fisher. The Division of North Carolina Aquariums may continue to operate the North Carolina Aquarium Pier at Nags Head. Grants for projects with partnering local municipalities awarded prior to July 1, 2012, may be transferred to the local partnering municipality for completion or fulfillment.

This section became effective July 2, 2012. (PL)

## **Water Quality/Quantity/Groundwater**

### **Water Infrastructure Fund Closing Fee Conforming Changes**

S.L. 2012-142, Sec. 12.01 ([HB 950](#), Sec. 12.01) makes conforming changes to the statutes governing the Water Infrastructure Fund. This section also lowers the fee that may be charged for a loan awarded from the Water Infrastructure Fund from 2½% to 2%.

This section became effective July 1, 2012. (PL)



## Chapter 8

### 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 **2012 Finance Law Changes** publication.

## **Enacted Legislation**

### **Extend Tax Provisions**

S.L. 2012-36 ([HB 1025](#)) extends the sunsets on preferential tax credits and deductions through the 2013 taxable year, in order to maintain the current state of the North Carolina tax code until comprehensive tax modernization can be considered during the 2013 Session of the General Assembly. The only credit extended beyond the 2013 taxable year is the film credit, which is extended through the 2014 taxable year in S.L. 2012-194.

See **Refundable Film Production Tax Credit/Extend Sunset** in this chapter.

This act became effective June 20, 2012. (HF)

### **Expedited Rule-Making for Forced Combination**

S.L. 2012-43 ([SB 824](#)) requires the Department of Revenue to adopt rules through an expedited rule-making process to provide guidance regarding the Secretary of Revenue's authority to force combination of separate entity returns.

This act became effective June 20, 2012. (CA)

### **Appraisal Management Company Reported to Department of Revenue**

S.L. 2012-65 ([HB 1028](#)). See **Occupational Boards and Licensing**.

### **Economic Development and Finance Changes**

S.L. 2012-74 ([HB 1015](#)) makes several changes necessary to balance the fiscal year 2012-2013 budget, enhance economic development projects, and clarify existing economic development statutes as follows:

- Sets the rates for the public utility regulatory fees and the insurance regulatory charge for fiscal year 2012-2013 necessary to fund the Public Utilities Commission and the Department of Insurance. The rates for this year are the same as the rates last year. The utility regulatory rates became effective July 1, 2012.
- Creates an individual income tax deduction for educator expenses. This provision is effective for taxable years beginning on or after January 1, 2012.
- Clarifies and extends the time to apply for a sales tax refund of aviation fuel for fiscal year 2010-2011 and fiscal year 2011-2012.
- Permits the use of Industrial Development Fund moneys for sewer infrastructure projects in adjoining counties.
- Temporarily allows a 20-year carryforward period under the article providing tax credits for growing businesses for a taxpayer who makes an investment of \$100 million in a tier one county. The temporary change is effective for taxable years

beginning on or after January 1, 2012, and expires for taxable years beginning on or after January 1, 2013.

- Makes a technical correction to the definition of a port enhancement zone. The correction becomes effective for taxable years beginning on or after January 1, 2013.
- Accelerates the sales tax relief enacted in 2011 for purchases of specialized equipment used at State ports by providing a one-year sales tax refund for these purchases made in fiscal year 2012-2013.

Except as otherwise specified above, this act became effective June 26, 2012. (CA)

## **Revenue Laws Technical, Clarifying, and Administrative Changes**

S.L. 2012-79 ([SB 826](#)) makes a number of technical, administrative, and clarifying changes to the revenue laws and related statutes. The act was a recommendation of the Revenue Laws Study Committee. The technical changes appear in Part I, the clarifying and administrative changes appear in Part II, and changes related to the combined motor vehicle registration and property tax collection system appear in Part III.

This act became effective June 26, 2012. (TG)

## **Expand Setoff Debt Collection Act**

S.L. 2012-88 ([HB 605](#)) allows a regional solid waste management authority to participate under the Setoff Debt Collection Act in the same manner as counties and cities, allowing counties that operate their solid waste management services collectively to use the same collection tool available to them if they operated the service individually.

This act becomes effective January 1, 2013, and applies to tax refunds determined by the Department of Revenue on or after that date. (CA)

## **Cap Motor Fuels Excise Tax Rate**

S.L. 2012-142, Sec. 24.11 ([HB 950](#), Sec. 24.11), as amended by S.L. 2012-194, Sec. 61.2 ([SB 847](#), Sec. 61.2) effectively reduced the motor fuel excise tax rate by placing a cap on the rate of 37.5¢ per gallon for the period July 1, 2012, through June 30, 2013. A taxpayer who makes a good faith effort to comply with the law is not responsible for over- or under-collection of the tax between July 1, 2012, and August 1, 2012.

This section became effective July 1, 2012. (CA)

## **Contingency Contracts for Audits/Assessments**

S.L. 2012-152 ([HB 462](#)), as amended by S.L. 2012-194, Sec. 61.5 ([SB 847](#), Sec. 61.5) prohibits the Department of Revenue, local governments, and the State Treasurer from using third-party contractors paid on a contingent fee basis for audit and assessment purposes. The State Treasurer retains the authority to use a contingent fee contract with a maximum compensation of 12% of the final assessment for audits of unclaimed death benefits and unredeemed bond funds.

The portion of the act relating to the Department of Revenue and the State Treasurer becomes effective October 1, 2012. The portion of the act relating to local governments becomes effective July 1, 2013, and expires July 1, 2015. (GR)

## **Public Finance Laws/Municipal Service Districts**

S.L. 2012-156 ([SB 426](#)) makes changes to the bond statutes designed to improve their efficiency and authorizes a resolution establishing a municipal service district to become effective upon a date specified in the resolution, as opposed to July 1.

This act became effective July 12, 2012. (CA)

## **Modify Taxation of Homeowners Association Property**

S.L. 2012-157 ([HB 1105](#)) simplifies the collection of property taxes due on property owned by certain nonprofit homeowners associations (HOA), and requires that the recoupment of tax paid by a HOA on common property located in a separate taxing jurisdiction be on a pro rata basis, based on the number of units or lots.

This act became effective for taxes imposed for taxable years beginning on or after July 1, 2012. (DE)

## **Refundable Film Production Tax Credit/Extend Sunset**

S.L. 2012-194, Sec. 79.10 ([SB 847](#), Sec. 79.10) extends the expiration of the refundable film production tax credit from January 1, 2014, to January 1, 2015.

This section became effective July 17, 2012. (TG)

## **Studies**

### **Study Municipal Local Option Sales Tax**

S.L. 2012-189 ([HB 1181](#)) authorizes the Revenue Laws Study Committee to study two local tax issues:

- Whether municipalities should be granted the authority to levy a local option sales tax for beach nourishment.
- How leasehold interests in exempt real property should be taxed and valued for property tax purposes

This act became effective July 16, 2012. (TG)





## Chapter 9

# Health and Human Services

Susan Barham (SB), Amy Jo Johnson (AJ), Theresa Matula (TM), Shawn Parker, (SP),  
Jan Paul (JP), Patsy Pierce (PP), Barbara Riley (BR)

## **Enacted Legislation**

### **Pre-K Eligibility Clarification**

S.L. 2012-13, Sec. 2 ([HB 966](#), Sec. 2) clarifies that family income must not exceed 75% of the State median income (SMI) for a child to be eligible for the NC Pre-K program. Up to 20% of children enrolled may have family incomes in excess of 75% SMI if they have other designated risk factors. The parental co-pay requirement is repealed.

This section became effective June 11, 2012. (PP)

### **Charitable Licensing Exemption Clarification**

S.L. 2012-15 ([HB 302](#)) broadens the exemption from charitable licensing requirements for charitable, nonprofit, faith-based, adult residential treatment facilities that do not receive any federal or State funding by repealing the requirement that such entities be part of an international organization serving at least 50 countries. The act also extends to December 31, 2015, the sunset on a waiver for establishment of a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness or emotional disturbance.

This act became effective July 1, 2012. (JP)

### **Pseudoephedrine Amount Clarifications**

S.L. 2012-35 ([HB 941](#)) clarifies that, without a prescription, no person may purchase or deliver more than 3.6 grams of specified pseudoephedrine products per day, nor more than 9 grams within a 30-day period, for purposes of pseudoephedrine transaction limits. The act also directs a retailer who sells pseudoephedrine products without a prescription to a person 18 years or older to require the buyer to produce specified identification and clarifies electronic recordkeeping requirements for pseudoephedrine products.

This act became effective June 20, 2012. (JP)

### **Use Repairs and Renovations Funds for 2011-2012 Medicaid Costs**

S.L. 2012-57 ([HB 14](#)) directs the Director of the Budget, in conjunction with other necessary officials, to adjust the budget by requiring up to \$94 million appropriated to the Repairs and Renovations Reserve Account for the 2011-2012 fiscal year to be transferred to the State Controller to the extent necessary to ensure adequate Medicaid funding. Transfers are limited to the amounts actually required to pay providers through the end of the 2011-2012 fiscal year. If any of the funds transferred are not required to pay providers, the authority to transfer funds immediately lapses with respect to the unneeded portions, and any excess funds transferred will be transferred back to the Repairs and Renovations Reserve. On or before October 1, 2012, the Office of State Budget and Management and the Department of Health and

Human Services will report to the Appropriations/Base Budget Committee of the Senate, the Appropriations Committee of the House of Representatives, and the Joint Legislative Commission on Governmental Operations regarding any necessary transfers.

This act became effective June 25, 2012. (AJ)

## **Eliminate Local Management Entities Provider Endorsement**

S.L. 2012-66 ([HB 1055](#)), as recommended by the Joint Legislative Oversight Committee on Health and Human Services, eliminates provider endorsement as one of the functions and duties of a local management entity.

This act became effective June 26, 2012. (SB)

## **Provisional Licensure Changes Medicaid**

S.L. 2012-72 ([HB 1081](#)) changes the titles of certain licensed psychologists, clinical social workers, and clinical addictions specialists in order to provide clarification regarding their licensure status and to meet requirements of the Center for Medicare and Medicaid Services. The act also adds licensed clinical social worker associates, licensed professional counselor associates, licensed marriage and family therapist associates, and licensed clinical addiction specialist associates to the list of providers of mandatory mental health services for children.

This act became effective June 26, 2012. (JP)

## **Accountable County Commissioners/Expand Local Board Authority**

S.L. 2012-126 ([HB 438](#)), as amended by S.L. 2012-194, Sec. 62 ([SB 847](#), Sec. 62), authorizes boards of county commissioners to assume direct control of activities conducted by commissions, boards, or agencies appointed by or acting under the authority of the board of county commissioners subject to certain restrictions. The act requires consolidated agencies to comply with federal merit personnel system requirements and exempts agency staff from the State Personnel Act (SPA) unless the board of county commissioners elects to make personnel subject to the SPA.

### **Public Health Changes. –**

- *Public Health Improvement Incentive Program.* – The act establishes, within the Department of Health and Human Services, a Public Health Improvement Incentive Program to provide monetary incentives for local health departments that serve populations of 75,000 or more and directs the Commission for Public Health to adopt rules to implement the program. By July 1, 2014, in order to receive State and federal pass-through funding, a local health department must be accredited, and counties must maintain local health department funding at the 2010-2011 fiscal year local ad valorem tax receipts.
- *Essential Public Health Services.* – The act rewrites the essential public health services provision of the Public Health Law and codifies ten essential public health services to be available and accessible to persons served by local health departments.
- *Study transferring responsibilities of the Division of Public Health.* – The act directs the Program Evaluation Division of the North Carolina General Assembly to study the feasibility of a transfer of functions, duties, and obligations of the Division of Public Health to the UNC Healthcare System and/or the School of Public Health at The University of North Carolina and submit findings and recommendations by February 1, 2013.

This act became effective June 29, 2012. (SP)

## Mental Health Crisis Management

S.L. 2012-128 ([SB 347](#)) authorizes acute care hospitals and other sites of first examination to take certain actions to assist in the management of populations pending involuntary commitment placement. The act directs the Department of Health and Human Services to study and report on Local Management Entity efforts to reduce multiple crisis episodes and acute care inpatient admissions to the North Carolina General Assembly beginning October 1, 2012, and quarterly thereafter until December 31, 2013.

This act became effective June 29, 2012. (SP)

## Medicaid Program Disclosures to the Fiscal Research Division

S.L. 2012-142, Sec. 6.12 ([HB 950](#), Sec. 6.12.). See **State Government**.

## NC Pre-K/Child Care

S.L. 2012-142, Sec. 10.1 through 10.2 ([HB 950](#), Sec. 10.1 through 10.2) makes several substantive and clarifying changes to the NC Pre-K program as follows:

- NC Pre-K contractors must issue multi-year contracts to licensed private child care centers providing NC Pre-K classrooms.
- The Division of Child Development and Early Education (DCDEE) must create a pilot program for classroom-based funding instead of slot-based funding. The pilot program will be implemented in three different geographic regions. Findings of the pilot program regarding numbers and costs of students served and a comparison of average costs per student in the pilot program and through current funding methodology must be presented to the Health and Human Services Appropriations subcommittees of the House of Representatives and Senate, and the Fiscal Research Division by January 31, 2013.
- DCDEE must continue to implement the NC Pre-K program serving children who reach age four by August 31 and who meet eligibility criteria. Developmental disabilities or other chronic health care issues are the only health factors that may be considered as factors in determining eligibility.
- The Child Care Commission (CCC) must adopt rules to exempt parentally-provided food from meeting CCC nutrition standards, to prohibit child care facilities from providing supplemental food and beverages to children whose parents have opted out of supplemental food programs, and to prohibit the inclusion of parentally-provided food and beverages as factors in child care environmental quality ratings.
- All entities providing NC Pre-K must adhere to DCDEE policies, standards, and requirements.
- DCDEE must develop a standard slot award and student selection process and submit an annual report no later than March 15, including the numbers of children served, those who have never been served by any other prekindergarten program, expenditures, local contributions, and program evaluation results to the Joint Legislative Commission on Governmental Operations, Joint Legislative Oversight Committee on Health and Human Services, the Health and Human Services Appropriations subcommittees of the House of Representatives and Senate, the Office of State Budget and Management, and the Fiscal Research Division.
- Child Care Subsidy waiting list information must include data on a family's receipt of services through NC Pre-K or Head Start.

This section became effective July 1, 2012. (PP)

## **"Read NC" Early Literacy Initiative/Development Officers/ Assistance to Rural Partnerships**

S.L. 2012-142, Sec. 10.4 ([HB 950](#), Sec. 10.4) creates the "Read NC" early literacy pilot initiative to be managed by the North Carolina Partnership for Children, Inc. Funds are set aside for this initiative dependent upon adequate funding for the Medicaid budget for the 2012-2013 fiscal year. If funding is available, "Read NC" will be implemented beginning January 1, 2013, and additional staff may be hired at the North Carolina Partnership for Children, Inc. for program implementation and management. This initiative will educate families in essential literacy practices, increase the quality of literacy programming in child care, and increase community-based literacy opportunities for families and young children.

The Division of Child Development and Early Education and the North Carolina Partnership for Children, Inc. must report by April 1, 2013, to the Joint Legislative Commission on Governmental Operations, Joint Legislative Oversight Committee on Health and Human Services, and the Health and Human Services Appropriations subcommittees of the House of Representatives and Senate on the progress of the "Read NC" initiative.

The North Carolina Partnership for Children, Inc. must train and assist with grant writing and fund-raising with local partnerships. Additional staff may be hired to help meet this directive. If funding is available, additional assistance to rural partnerships based on amounts of child poverty, child population characteristics, and county-wide economic levels, will be provided.

This section became effective July 1, 2012. (PP)

## **Medicaid Eligibility – Cost-of-Living Adjustment Disregard**

S.L. 2012-142, Sec. 10.6 ([HB 950](#), Sec. 10.6) directs the Department of Health and Human Services to disregard an increase in a Medicaid recipient's income that is due solely to a cost-of-living-adjustment to federal Social Security and Railroad Retirement payments when determining income eligibility for the Medicaid program.

This section becomes effective January 1, 2013, and expires on December 31, 2017. (AJ)

## **Medicaid Nonemergency Medical Transportation Services**

S.L. 2012-142, Sec. 10.7 ([HB 950](#), Sec. 10.7) directs the Department of Health and Human Services (DHHS), in consultation with the Department of Transportation (DOT), to issue a Request for Proposal (RFP) for the management of nonemergency medical transportation for Medicaid recipients. The section directs DHHS and DOT to consider a list of specific information when developing the RFP. The Division of Medical Assistance must submit a written report to the Joint Legislative Oversight Committee on Health and Human Services and to the Joint Legislative Oversight Committee on Transportation that includes the analysis required for the development of the RFP by September 15, 2012. No contract will be entered into until the reporting requirement is met and DHHS determines it is cost-effective to contract for the transportation services.

This section became effective July 1, 2012. (AJ)

## **Smart Card Pilot Program**

S.L. 2012-142, Sec. 10.9 ([HB 950](#), Sec. 10.9) repeals the smart card pilot program established in 2011 and instead requires the Department of Health and Human Services (DHHS), out of available funds (up to \$1 million), to implement the North Carolina Smart Card Pilot Program. DHHS may contract with a third-party vendor to develop and execute the pilot

program. To reduce program cost, DHHS must work with the Division of Motor Vehicles to leverage State data such as drivers' license photos and other identification data.

The section requires the Provider and Recipient Services Unit of the Division of Medical Assistance to administer the program. The pilot program must be conducted in two urban and two rural areas of the State to evaluate the feasibility of the Smart Card Program in different geographical regions of the State. The pilot program must include the use of at least two different types of available technology 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 must not include a requirement for preenrollment of recipients.

The section also directs DHHS to consider additional specified components of the pilot program, and to evaluate program expansion and the need for additional rules and policies.

DHHS must submit a written report on the program no later than March 1, 2013, to the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, the Senate Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2012. (SB)

## **Medicaid Option – Special Care and Memory Care Units**

S.L. 2012-142, Sec. 10.9E ([HB 950](#), Sec. 10.9E), as amended by S.L. 2012-145, Sec. 3.5 ([SB 187](#), Sec. 3.5), requires the Department of Health and Human Services (DHHS), by September 15, 2012, to develop and submit to the Centers for Medicare and Medicaid Services (CMMS) an application for a home- and community-based services program, authorized under Medicaid State Plan 1915(i) authority. The program is for individuals who are typically served in special care and memory care units, and are eligible for the State-County Special Assistance program, and have been diagnosed with a degenerative, irreversible disease that attacks the brain and results in impaired memory, thinking, and behavior. The program developed by DHHS must focus on providing individuals with personal care services necessary to ameliorate the effects of gradual memory loss, impaired judgment, disorientation, personality change, difficulty learning, and loss of language skills. DHHS must implement the program upon approval of the application by CMMS on or before April 1, 2013, and provide a report on the status of approval and implementation to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2012. (TM)

## **Personal Care Services/Activities of Daily Living Eligibility**

S.L. 2012-142, Sec. 10.9F ([HB 950](#), Sec. 10.9F), as amended by S.L. 2012-145, Sec. 3.7 ([SB 187](#), Sec. 3.7), makes changes to Medicaid Personal Care Services as follows:

- Repeals S.L. 2011-145, Sec. 10.38, which required Department of Health and Human Services (DHHS), Division of Medical Assistance (DMA) to develop and implement a home- and community-based services program under Medicaid State Plan 1915(i) authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes.

- Directs the DMA to provide Personal Care Services as specified in this section, and to apply to the Centers for Medicare and Medicaid Services for a Medicaid State Plan Amendment by July 15, 2012.
- Provides that Personal Care Services for Children will assist families in meeting personal care needs of children under the age of 21, and will include a Medical Coverage Policy that provides up to 60 hours per month in accordance with an independent assessment; a process for evaluation or reevaluation; and appropriate actions to manage the cost, quality, program compliance, and utilization of personal care services.
- Provides that, effective January 1, 2013, a Medicaid recipient meeting the criteria below, is eligible for up to 80 hours per month of personal care services as a result of an assessment performed by an independent assessment entity (IAE).
  - Medicaid recipient must have a medical condition, disability, or cognitive impairment and demonstrate unmet needs for, at a minimum, (1) 3 of 5 qualifying activities of daily living (ADLs) with limited hands-on assistance; (2) 2 ADLs in which one requires extensive assistance; or (3) 2 ADLs in which 1 requires assistance at the full dependence level. The ADLs include: eating, dressing, bathing, toileting, and mobility. The ADLs do not include: nonmedical transportation; financial management; non-hands-on assistance (cueing, prompting, guiding, coaching, or babysitting); and household chores not directly related to qualifying ADLs.
  - Medicaid recipient must reside in a private living arrangement, an adult care home, or a combination home.
- Effective January 1, 2013, requires assessments for personal care services be performed by an IAE once the primary or attending physician provides written authorization for referral for the service and the medical necessity for the service. After assessing a recipient's degree of functional disability and level of unmet needs for personal care services in the 5 ADLs, the IAE will determine and authorize the amount of the services to be provided.
- Requires DHHS to report to the Joint Legislative Oversight Committee on Health and Human Services on implementation of this section and on the progress in making independent assessments of recipients by September 1, 2012.

Except as otherwise specified, this section became effective July 1, 2012. (TM)

## **AIDS Drug Assistance Program Pilot**

S.L. 2012-142, Sec. 10.16 ([HB 950](#), Sec. 10.16) directs the Department of Health and Human Services (Department), out of funds available, to develop a pilot program to enroll individuals receiving services under the Aids Drug Assistance Program (ADAP) in Inclusive Health North Carolina. The pilot must not be implemented until actuarial services determine the program will be cost neutral or achieve savings. If the pilot is determined to be cost neutral or achieve savings, it must be implemented from January 1, 2013, through December 31, 2013. The Department must select up to three HIV/AIDS care providers with the highest number of ADAP recipients to participate in the pilot program. The Department may contract with a vendor to determine the results of the pilot program and must report the results to the Joint Legislative Oversight Committee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by April 1, 2014.

This section became effective July 1, 2012. (BR)

## **Equalize Special Assistance Payments under In-Home, Adult Care Home, and Rental Assistance Programs**

S.L. 2012-142, Sec. 10.23 ([HB 950](#), Sec. 10.23) makes a number of changes to the State-County Special Assistance (SA) in-home program as outlined below.

- Increases the standard monthly payment to individuals enrolled in a SA in-home program from 75% to 100% of the monthly payment the individual would receive if they resided in an adult care home and requires all county departments of social services to participate in the State-County SA in-home program by making slots available.
- Requires the Department of Health and Human Services (DHHS) to establish a formula to determine the need for additional State-County SA in-home slots for each county by February 15, 2013, and review the formula on July 1 of every year beginning in 2014.
- Requires county departments of social services with State-County SA in-home slots:
  - To maintain at least the same number of slots during the 2012-2013 fiscal year as the average number of slots filled during the 2011-2012 fiscal year, if they do not have all of their slots filled by February 15, 2013; and
  - If they have SA in-home slots but have not filled any of the slots, to begin participating in the SA in-home program effective February 15, 2013, and filling slots.
- Requires county departments of social services without State-County SA in-home slots to begin participating in the SA in-home program effective February 15, 2013.
- Grants the Secretary of DHHS the authority to waive the 15% cap on SA in-home payments effective February 15, 2013, notwithstanding current law and within existing SA appropriations.
- Amends the law to provide that DHHS must maintain the State's appropriation to the State-County SA program at 100% of the State certified budget enacted by the General Assembly for the 2012-2013 fiscal year. Each county department of social services is required to maintain its allocation to the SA program at 100% of the county funds budgeted for the program for the 2011-2012 fiscal year. Both DHHS and each county are required to use these budgeted funds for the SA program, the SA in-home program, and rental assistance.

This section becomes effective February 15, 2013. (TM)

## **Transitions to Community Living Initiative**

S.L. 2012-142, Sec. 10.23A, subsections (a), (d) through (g), and (i) through (j) ([HB 950](#), Sec. 10.23A, subsections (a), (d) through (g), and (i) through (j)), as amended by S.L. 2012-145, Sec. 3.6 ([SB 187](#), Sec. 3.6), establishes the Transitions to Community Living Fund and appropriates \$10.3 million to the Department of Health and Human Services (DHHS) for transitioning individuals with severe mental illness and severe and persistent mental illness into community living arrangements, including establishing a rental assistance program. If the State executes an agreement or a plan with the United States Department of Justice in response to their findings, the funds must be used to implement the first year of the agreement or plan. This section gives DHHS the authority to implement temporary rules.

The sum of \$39.7 million is designated for implementation of the State's plan to provide temporary short-term assistance to adult care homes only as the State's Transitions to Community Living Initiative takes place. Following an independent assessment by December 31, 2012, and upon certification, DHHS may make a monthly payment to the adult care home to provide services for a resident: (1) who is no longer eligible to receive Medicaid reimbursable assistance; (2) for whom a community placement has not been arranged; and (3) who cannot be

safely and timely discharged into the community. The monthly payments will be made from the \$39.7 million, and each payment cannot exceed \$694 per month per resident for a period not to exceed 3 months per resident. At the end of 3 months, the monthly payment will be reduced by 25% and cannot exceed \$520.50 per month per resident. Once the home- and-community-based services program for elderly individuals who are typically served in special care or memory care units is implemented under Medicaid State Plan 1915(i) authority, DHHS will no longer make monthly payments for services provided to residents of special care or memory care units. DHHS can make no monthly payments pursuant to this program after June 30, 2013. DHHS must report on the plan's progress to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division by January 2, 2013, with a final report by April 1, 2013.

These sections became effective July 1, 2012. The portion of funding provided for implementation of the State's plan to provide temporary short-term assistance to adult care homes expires June 30, 2013, and any unobligated funds revert to the Transitions to Community Living Fund. See **Studies** in this Chapter for a summary of S.L. 2012-142, Sec. 10.23A, subsections (b), (c), and (h). (TM)

## Local Management Entity (LME) Governance

S.L. 2012-151 ([SB 191](#)) amends the Mental Health, Developmental Disabilities, and Substance Abuse (MH/DD/SA) Act of 1985 and other statutes to address identified barriers to the implementation of statewide expansion of the 1915(b)/(c) Medicaid Waiver. The act specifies a county's responsibility for the provision of MH/DD/SA services, including adhering to rules, policies, and guidelines developed pursuant to a statewide expansion of a 1915(b)/(c) Medicaid Waiver, and makes the changes outlined below.

**LME Board.** – The act changes board of director requirements by restricting the number of members and requiring specific expertise to be represented. Large LMEs (at least 1.25 million people within the catchment area) are authorized to utilize a different board structure with the unanimous consent of each constituent county's board of commissioners and approval of the Secretary of the Department of Health and Human Services (Secretary). Board members are required to receive annual training and may be removed for excessive absences.

**LME Powers, Duties, and Merger Activity.** – The act clarifies that only a LME may manage a 1915(b)/(c) Medicaid Waiver, allows a LME to add additional counties without unanimous approval of each county within the current catchment, and prohibits single-county disengagement for a two-year period while the Secretary develops rules that account for undisrupted services, catchment population requirements, capitation rates, and distribution of real property. The act authorizes LMEs to hold title to real property, borrow money, exclusively appoint the area director, protect competitive health care information, and seek approval from the Director of the Office of State Personnel for employees and director salaries that are in excess of ranges established by the State Personnel Commission.

**Guardianship.** – The act repeals the provision of law authorizing qualified area directors, officers, or employees of an area authority to serve as a guardian for adults adjudicated incompetent under the statutes governing incompetency and guardianship. The section redefines the term "disinterested public agent" to mean the director or assistant director of a county department of social services (formerly local human services agency). The act adds training requirements for corporations contracting with the disinterested public agent and prohibits certain providers from serving as guardians to individuals to whom it also provides MH/DD/SA services pursuant to a LME contract.

This act became effective July 12, 2012. (SP)



## Enact Volunteer Health Care Services Act

S.L. 2012-155 ([HB 614](#)), as amended by S.L. 2012-194, Secs. 47(a) and 47(b) ([SB 847](#), Secs. 47(a) and 47(b)), creates within the Department of Health and Human Services (DHHS) a registration system to allow for free health care services at properly registered Volunteer Health Care Events. All licensed health care providers receive limited liability for the provision of services provided at these events unless the act was the result of gross negligence, wanton conduct, or an intentional wrong doing. In addition, out-of-state practitioners who are approved to participate are not subject to additional licensure requirements during the event. To receive the described exemptions, a sponsoring organization must:

- Register with DHHS and pay a nominal fee.
- Limit events to no more than 7 days per calendar year.
- Provide to DHHS a list of participating providers within 14 days of the event which will be verified by State licensure boards for comparability.
- Maintain a list of qualified participants.
- Submit quarterly reports indicating which services were represented in sponsored events.
- Ensure at least one North Carolina licensed health care provider having access to the State Controlled Substance Reporting System is onsite during the event.
- Post notice of the limited liability onsite.

The act authorizes DHHS to revoke a sponsoring organization's status for failure to comply with the requirements, and to waive requirements during a natural disaster or emergency circumstance.

This act becomes effective January 1, 2013. (SP)

## Strengthen Child Safety Laws/Care Facilities

S.L. 2012-160 ([HB 737](#)) makes the following changes to the law requiring criminal history checks on child care providers:

- Expands the definition of "child care provider" to include both permanent and temporary employees and substitute providers, as well as family members and nonfamily members, in family child care homes who use the home as a permanent or temporary place of residence, and eliminates from the definition the requirement that the employee have contact with the children.
- Expands the definition of "criminal history" to include criminal charges, and adds additional offenses to the list of crimes bearing on the safety of children.
- Prohibits certain convicted and adjudicated persons from being child care providers or uncompensated child care providers.
- Continues the requirement that the Department of Health and Human Services (DHHS) ensure certain criminal history checks of providers prior to employment and every three years thereafter.
- Permits DHHS to prevent habitually excessive alcohol and drug users or mentally or emotionally impaired individuals from being child care providers.
- Adds intentional falsification of information on a criminal history check as a ground for DHHS to disallow an individual to provide child care.
- Specifies that district court review of a DHHS decision is *de novo* and that no jury trial is available for such appeals.

- Amends certain provisions regarding payment for required criminal history checks. This act becomes effective January 1, 2013. (JP)

## **Absconding Probation/Violators Forfeit Benefits**

S.L. 2012-170 ([HB 1173](#)). See **Courts, Justice, and Corrections**.

## **Critical Access Behavioral Health Agencies**

S.L. 2012-171 ([SB 525](#)) directs the Department of Health and Human Services to ensure that Critical Access Behavioral Health Agencies (CABHA) are the sole providers of Community Support Team, Intensive In-Home, and Child and Adolescent Day Treatment services for the State Medicaid program. CABHAs are required to provide, at a minimum, a comprehensive clinical assessment, medication management, outpatient therapy, and at least two of the listed services within an age- and disability-specific continuum; to provide services in accordance with State and federal requirements and policies; and to meet specified staffing requirements.

This act became effective July 12, 2012. (JP)

## **Modify University of North Carolina Health Care System Board**

S.L. 2012-174 ([HB 1073](#)). See **Education**.

## **Dentistry Management Arrangements**

S.L. 2012-195 ([SB 655](#)) addresses management arrangements between dentists or dental practices and management companies. The act requires that all dental management arrangements executed on or after January 1, 2013, contain a conspicuous and specific warning to the parties executing the agreement concerning the right to review of the agreement by counsel. The act directs that no member of the North Carolina State Board of Dental Examiners (Board) will be subject to examination in connection with a review by the Board of a management arrangement. Additionally, the act allows employees or agents of the Board to report to the appropriate law enforcement agency or district attorney information that a crime may have been committed, requires the Board to cooperate with any investigations that may be conducted, and provides for the confidentiality of information disclosed by the Board. The act adds Wake County as an appropriate venue for actions to enjoin acts constituting the unlawful practice of dentistry.

The act also sets up a task force on dental management arrangement rules. The task force must study and make recommendations regarding issues arising in the consideration of dental management arrangements and report its findings and recommendations to the Board by January 1, 2013. The act directs the Board to adopt rules and to conform its existing rules after the Board has considered recommendations from the task force. The Board must submit a report, along with the Board's proposed course of action, to the General Assembly by February 1, 2013.

This act became effective July 19, 2012. (AJ)

## **Studies**

### **New/Independent Studies/Commissions**

#### **Blue Ribbon Commission on Transitions to Community Living**

S.L. 2012-142, Sec. 10.23A, subsections (b), (c), and (h) ([HB 950](#), Sec. 10.23A, subsections (b), (c), and (h)) establish the Blue Ribbon Commission on Transitions to Community Living (Commission) to examine the State's system of community housing and community supports for people with severe mental illness, severe and persistent mental illness, and intellectual and developmental disabilities, and to develop a plan to continue to advance the State's current system into a statewide system of person-centered affordable services and supports that emphasize an individual's dignity, choice, and independence. The Commission will be composed of 32 members and must appoint a Subcommittee on Housing and a Subcommittee on Adult Care Homes, each composed of 15 members. Reporting requirements include an interim report by October 1, 2012, and a final plan to the General Assembly no later than February 1, 2013.

This section became effective July 1, 2012. (TM)

### **Referrals to Existing Commissions/Committees**

#### **Examination of the State's Delivery of Mental Health Services**

S.L. 2012-142, Sec. 10.11 ([HB 950](#), Sec. 10.11), as amended by S.L. 2012-145, Sec. 3.4 ([SB 187](#), Sec. 3.4), directs the Joint Legislative Oversight Committee on Health and Human Services to appoint a subcommittee to examine the State's delivery of mental health services. The following components must be reviewed:

- The State's progress in delivering mental health services in integrated settings.
- The State's capacity to meet growing mental health needs.
- The process for determining catchment areas for psychiatric hospitals, including managed care organization groupings and alternatives to the current process that would increase efficiency and equity.
- The impact of the 1915(b)/(c) Medicaid waiver and other mental health reforms on guardianship roles, responsibilities, relationships, and recommended legislation to transfer State Mental Health/Developmental Disabilities/Substance Abuse Services guardianship responsibilities to county departments of social services.

The subcommittee must report its findings to the Joint Legislative Oversight Committee on Health and Human Services by January 15, 2013.

This section became effective July 1, 2012. (PP)

### **Referrals to Program Evaluation or Fiscal Research**

#### **Program Evaluation Division and Fiscal Research Division Joint Study Medicaid Organization**

S.L. 2012-142, Sec. 10.9B ([HB 950](#), Sec. 10.9B) directs the Program Evaluation Division and the Fiscal Research Division of the General Assembly to study the feasibility of creating a separate Department of Medicaid. A joint recommendation must be made to the 2013 Regular Session of the General Assembly no later than February 15, 2013, and include a review of the

administration of other state Medicaid programs, an analysis of benefits and disadvantages to creating a Department of Medicaid, any adverse impact a Department of Medicaid may have on the administration of other agencies within the Department of Health and Human Services, and an identification of various Medicaid organizational structures, including any costs and savings associated with such structures.

This section became effective July 1, 2012. (AJ)

## **Referrals to Departments, Agencies, Etc.**

### **Study Electronic Prior Authorization for Medicaid Prescriptions**

S.L. 2012-142, Sec. 10.8A ([HB 950](#), Sec. 10.8A) directs the Department of Health and Human Services (DHHS) to study the implementation of an electronic prior authorization system for prescription medication consistent with standards adopted by the National Council of Prescription Drug Programs. DHHS must include in its study a review of other states' experiences and report the findings to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division no later than March 1, 2013.

This section became effective July 1, 2012. (AJ)

## Chapter 10

### Insurance

Kory Goldsmith (KG), Tim Hovis (TH), Amy Jo Johnson (AJ), Bill Patterson (BP)

### **Enacted Legislation**

#### **Right to Choose Physical Therapist**

S.L. 2012-129 ([SB 656](#)) adds physical therapists licensed by the North Carolina Board of Physical Therapy Examiners to the list of health care providers from which an insured may choose under a health benefit plan. This provision is also applicable to the State Health Plan.

This act becomes effective October 1, 2012. (AJ)

#### **2012 Workers' Compensation Amendments**

S.L. 2012-135 ([HB 237](#)). See **Labor and Employment**.

#### **Transfer of Health Insurance Consumer Protection Unit and Managed Care Patient Assistance Program to the Department of Insurance**

S.L. 2012-142, Sec. 15.3 ([HB 950](#), Sec. 15.3) transfers the Health Insurance Consumer Protection Unit and any portion of the Office of Managed Care Patient Assistance Program managed by the Department of Justice from the Department of Justice to the Department of Insurance.

This section became effective July 1, 2012. (BP)

#### **Mutual Insurance Holding Companies**

S.L. 2012-161 ([SB 647](#)) authorizes a domestic mutual insurance company to reorganize as a mutual insurance holding company. Following reorganization, members of the mutual insurance company receive ownership interest in the mutual insurance holding company, and the mutual insurance company is then converted into a stock insurance company held by the holding company. Policyholders in the mutual insurance company must approve the reorganization by a two-thirds vote. In addition, the Commissioner of Insurance (Commissioner) must approve the reorganization as fair and equitable to the policyholders. The holding company at all times must own a majority of the voting shares of the mutual insurance company. As a stock insurance company, the reorganized insurer may raise capital.

Following reorganization, the Commissioner retains jurisdiction over the mutual insurance holding company, the reorganized insurance company, and any stock insurance subsidiaries of the holding company, including the approval of all stock offerings and mergers.

This act also requires the Commissioner to conduct fire safety inspections as often as required by the fire code. Inspections may be conducted more often if the Commissioner determines it to be necessary.

This act became effective July 12, 2012. (TH)

## Improve Property Insurance Rate Making

S.L. 2012-162 ([SB 836](#)) makes the following changes to the property insurance rate making process:

- Requires all property insurance rate filings to be open to the public.
- Requires the Department of Insurance (Department) to receive public comments regarding the filing at least 30 days before a notice of hearing is issued by the Commissioner of Insurance (Commissioner).
- Authorizes the Commissioner, upon finding the proposed rate in a filing is excessive, to specify a rate between the existing rate and the rate proposed by the North Carolina Rate Bureau (Rate Bureau) in the rate filing.
- Provides that property insurance rates may reflect the cost of reinsurance purchased by insurers to protect against catastrophic exposure within the State. Expected reinsurance recoveries, the State's exposure to catastrophic events relative to other states' exposure, and amounts paid to reinsurers are among the factors that may be considered when determining the cost of reinsurance.
- Directs the Rate Bureau to develop a policy for residential property insurance coverage without coverage for the perils of windstorm and hail.
- Directs the Rate Bureau, with the assistance of the Department, to study current geographic territories established by the Rate Bureau for rating purposes, to ensure that risks of the same class and hazard are charged actuarially correct premiums commensurate with the risk of loss, and to consider alternatives to the current territorial system. The Rate Bureau is directed to report its recommendations to the 2013 General Assembly.

Provisions directing the Rate Bureau to develop a fire policy without wind and hail coverage become effective December 1, 2012. The provision directing the Rate Bureau to study the current system of geographic territories became effective July 12, 2012. The remaining provisions of the act became effective July 1, 2012. (TH)

## Motorcycle Insurance Discount/Military

S.L. 2012-176 ([HB 1044](#)). See **Military, Veterans', and Indian Affairs**.

## Studies

### Study State Fire Protection Grant Fund Distribution Method

S.L. 2012-142, Sec. 20.1 ([HB 950](#), Sec. 20.1) directs the Department of Insurance to study how the fund distribution method for the State Fire Protection Grant Fund can more fully meet its statutory requirement to be equitable and uniform, and to report its findings and recommendations to the House and Senate Appropriations Subcommittees on General Government and to the Fiscal Research Division on or before October 1, 2012.

This section became effective July 1, 2012. (BP)

# Chapter 11

## Labor and Employment

Karen Cochrane-Brown (KCB), Sara Kamprath (SK), Bill Patterson (BP)

### **Enacted Legislation**

#### **Reform Workforce Development**

S.L. 2012-131 ([SB 815](#)) amends the State's workforce development laws, modifies the duties and membership of the Commission on Workforce Development, and establishes the Joint Legislative Workforce Development System Reform Oversight Committee (Committee). The Committee must monitor and oversee efforts to streamline the workforce development system, enhance accountability for the system, strengthen the Job Link Career Center System, implement technology to integrate programs at Job Link Centers, and improve access to workforce development activities. The Committee must make an interim report to the 2014 Regular Session of the 2013 General Assembly and submit a final report to the 2015 General Assembly.

This act became effective June 29, 2012. (SK)

#### **Unemployment Insurance Changes**

S.L. 2012-134 ([SB 828](#)) modifies unemployment insurance benefit laws as follows:

- Validates the effect of Executive Order 113 by extending the three-year look-back sunset from January 1, 2012, to January 1, 2013. Extended benefits will not be allowed in North Carolina for claim weeks later than May 12, 2012, because the State's unemployment rate fell below the three-year look-back trigger. The act calls attention to the Governor's lack of authority to make unemployment insurance (UI) law changes by executive order; any executive order on this issue is void unless issued upon authority conferred expressly by an act of the General Assembly or granted specifically to the Governor by Congress.
- Resolves changes made in the 2011 Legislative Session by the General Assembly that the United States Department of Labor (USDOL) found to be in conflict with federal UI laws and regulations. The act clarifies that a person may be disqualified from receiving UI benefits if the person is arrested or convicted of a crime related to the employee's work with the employer or in violation of a work rule or policy. The act provides that 3 written reprimands within a 12-month period are prima facie evidence of an employee's failure to adequately perform employment duties; this presumption may be rebutted by the claimant.
- Makes statutory changes necessary to comply with the three key integrity provisions recommended by the USDOL and enacted as part of the Trade Adjustment Assistance Extension Act of 2011. The act expands the requirements of the New Hire Directory, effective July 1, 2012. The act prohibits the non-charging of an employer's UI account when an improper payment is made due to the employer's failure to respond timely or adequately to a written request for separation information, effective October 1, 2013. The act imposes a penalty on the claimant equal to 15% of the amount of erroneous overpayment if the agency determines that the overpayment is due to fraud, effective October 1, 2013.
- Makes it a Class I felony to wrongfully obtain or increase an unemployment benefit if the amount wrongfully obtained exceeds \$400, effective December 1, 2012. The offense was formerly a Class 1 misdemeanor. The felony penalty provision mirrors

the current criminal provision for wrongfully obtaining a benefit under the Medicaid Program.

- Removes the three-year and ten-year statute of limitations for recovering an overpayment, effective October 1, 2012.
- The Division of Employment Security must report on its progress toward participating in the federal Unemployment Insurance Compensation Debt of the Treasury Offset Program.

Except as otherwise provided, this act became effective June 29, 2012. (CA)

## **2012 Workers' Compensation Changes**

S.L. 2012-135 ([HB 237](#)), as amended by S.L. 2012-194, Sec. 56 and Sec. 65.5 ([SB 847](#), Sec. 56 and Sec. 65.5), makes the following changes to the State's workers compensation laws:

- Requires the North Carolina Rate Bureau (Rate Bureau) to share information concerning employers' workers compensation insurance coverage with the North Carolina Industrial Commission (Commission).
- Makes records provided by the Rate Bureau to the Commission confidential and not subject to disclosure as public records, except for data showing the effective dates, cancellation dates, and reinstatement dates for workers compensation insurance policies becoming effective on or after January 1, 2012.
- Creates a Joint Legislative Committee on Workers Compensation Insurance Coverage Compliance and Fraud Prevention and Detection.
- Clarifies provisions governing employers' access to employee medical information.
- Requires the Commission to use standard rule-making procedures in setting fees to be paid by insurers for medical and hospital care.
- Authorizes the Commission to set a fee for compensating a health care provider for time spent communicating with the employer or employee.
- Requires an employee to pay for the mileage required to obtain a second opinion on permanent disability performed at the employee's request.
- Modifies the manner in which an employee may qualify for temporary total disability.
- Modifies the circumstances under which vocational rehabilitation services must be provided to the employee.

This act became effective July 1, 2012. The provisions relating to mileage for second opinions apply to examinations occurring on or after July 1, 2012, and the provisions pertaining to employer access to employee medical information apply to claims pending on or after July 1, 2012. The provisions pertaining to qualification for temporary total disability benefits and vocational rehabilitation services apply to claims arising on or after June 24, 2011. (BP)

## **State Government Employment/Repeal Comprehensive Compensation System**

S.L. 2012-142, Sec. 25.2C ([HB 950](#), Sec. 25.2C) repeals subsections of the law pertaining to the Comprehensive Compensation System for employees subject to the State Personnel Act. Included in the repeal are the Comprehensive Compensation System provisions concerning the career growth recognition award, cost-of-living adjustment, and performance bonus. A conforming change is made to the law pertaining to State Highway Patrol compensation.

The amendments include changing the statutory section heading from "Compensation of State Employees" to "Annual Compensation Survey" and requires the State Personnel Commission to conduct annual compensation surveys to guide the Governor and the General Assembly in making decisions regarding the compensation of State employees.

This section became effective July 1, 2012. (TM)



## **State Government Employment/Exempt Cabinet Department Positions**

S.L. 2012-142, Sec. 25.2E ([HB 950](#), Sec. 25.2E) amends the law to increase the number of positions in Cabinet departments that are exempt from the State Personnel Act and extends notification deadlines. The act increases to 1,000 the number of positions that can be designated by the Governor as exempt positions and removes the exempt policymaking and exempt managerial designations. The section extends the deadline for initially designating the positions by letter to the State Personnel Director, Speaker of the House of Representatives, and President of the Senate, from May 1 to July 1 of the year in which the oath of office is administered to the Governor. The amount of time the Governor, elected department head, or State Board of Education has to notify the State Personnel Director, Speaker of the House of Representatives, and President of the Senate when an exempt position is created, transferred, or reorganized is increased from 120 to 180 days.

This section becomes effective January 1, 2013. (TM)

## **Studies**

### **Comprehensive Review for Reform of Public Employee Compensation Plans/Recommendations for Legislation by March 1, 2013**

S.L. 2012-142, Sec. 25.2D ([HB 950](#), Sec. 25.2D), amends Sec. 29.20 of the Appropriations Act of 2011 which requires the Legislative Services Commission, through the Fiscal Research and Program Evaluation Divisions, to review and study the compensation plans of specified entities. The requirement no longer includes a review of the compensation plans for all employees of The University of North Carolina System, employees of the North Carolina Community College System, and local education agency employees. In addition, the act narrows the scope of the review to compensation plans for employees of State agencies, departments, and institutions, and for employees of The University of North Carolina System who are subject to the State Personnel Act. The act also requires 11 elements to be included in the review and extends the deadline for reporting the results of the review from May 1, 2012, to March 1, 2013.

This section became effective July 1, 2012. (TM)



## Chapter 12

### Local Government

Denise Huntley Adams (DHA), Erika Churchill (EC), Brad Krehely (BK),  
Theresa Matula (TM), Harrison Moore (HM), Giles S. Perry (GSP),  
Kelly Quick (KQ), Barbara Riley (BR), Susan L. Sitze (SLS)

## **Enacted Legislation**

### **Local Deannexations**

S.L. 2012-3 ([HB 5](#)) deannexes specified local involuntary annexations, suspends enforcement of those specified pending local involuntary annexations, repeals the local ordinances making those involuntary annexations, and prohibits involuntary annexation of those areas for 12 years. The specified involuntary annexations covered by the act were enacted by the municipalities of Kinston, Lexington, Rocky Mount, Wilmington, Asheville, Marvin, Southport, Goldsboro, and Fayetteville.

This act became effective July 1, 2012. To the extent this act is subject to Section 5 of the federal Voting Rights Act, it becomes effective upon preclearance. (GSP)

### **Annexation Reform 2**

S.L. 2012-11 ([HB 925](#)) amends the law pertaining to annexations initiated by municipalities. The act eliminates the petition to deny annexation and substitutes a requirement for a referendum. The act requires a vote of the residents of the area to be involuntarily annexed prior to the adoption of the involuntary annexation ordinance. If less than a majority of the voters vote for the annexation, the municipality may not proceed with annexing that area for 36 months.

The referendum vote must occur between the public hearing and the adoption of the annexation ordinance, and coincide with the next municipal general election.

This act became effective July 1, 2012, and applies to all ordinances of annexations initiated by municipalities adopted on or after that date. (EC)

### **Modernize North Carolina Emergency Management Act**

S.L. 2012-12 ([HB 843](#)). See **State Government**.

### **Firefighter's Relief Fund/Board Membership**

S.L. 2012-45 ([SB 929](#)) amends the residency requirements for the local Firefighter's Relief Fund board of trustees:

- Trustees elected by a fire department must either be a resident of the fire district or an active or retired member of the fire department.
- Trustees appointed by a local governing body must be residents of the fire district.
- The trustee appointed by the Commissioner of Insurance must either be a resident of the fire district or an active or retired member of the fire department.

This act became effective June 20, 2012. (TM)

## **Research Triangle Park District Amendments**

S.L. 2012-73 ([HB 391](#)) amends the authorizing statutes for county research and production districts to allow for additional permitted uses in those districts, including mixed-use development combining residential, retail, and business use. The act authorizes the establishment of urban service research districts within county research and production districts (see also S.L. 2012-194, Sec. 62.5 ([SB 847](#), Sec. 62.5)). The act also allows each county in which a multijurisdictional industrial park is located to determine whether or not to levy a tax in the portion of the park in that county, and increases the property tax limit in multijurisdictional industrial parks.

This act became effective June 26, 2012. (BR)

## **County Broadband Grants**

S.L. 2012-86 ([SB 572](#)) authorizes all counties in the State to provide grants to promote high-speed Internet access service in underserved areas by making the authority previously granted to Nash County in S.L. 2011-163 applicable statewide.

This act became effective June 28, 2012, and does not apply to any broadband grant process initiated by Nash County prior to June 1, 2012. (DHA)

## **Accountable County Commissions/Expand Local Board Authority**

S.L. 2012-126 ([HB 438](#)). See **Health and Human Services**.

## **Align One North Carolina Fund with Job Development Investment Grant Program**

S.L. 2012-142, Sec. 13.6 ([HB 950](#), Sec. 13.6). See **State Government**.

## **Apply State Ethics Act to Metropolitan Planning Organizations and Rural Planning Organizations**

S.L. 2012-142, Sec. 24.16 ([HB 950](#), Sec. 24.16). See **Transportation**.

## **Department of Transportation Relocation of Municipal Utilities**

S.L. 2012-145, Sec. 6.1 ([SB 187](#), Sec. 6.1). See **Transportation**.

## **Local Management Entities Governance**

S.L. 2012-151 ([SB 191](#)). See **Health and Human Services**.

## **Contingency Contracts for Audits/Assessments**

S.L. 2012-152 ([HB 462](#)), as amended by S.L. 2012-194, Sec. 61.5 ([SB 847](#), Sec. 61.5). See **Finance**.

## Public Finance Laws/Municipal Service Districts

S.L. 2012-156 ([SB 426](#)), as amended by S.L. 2012-194, Sec. 61.5 ([SB 847](#), Sec. 61.5). See **Finance**.

## Municipal Electric Utilities/Rate Hearings

S.L. 2012-167 ([HB 457](#)). See **Utilities**.

## North Carolina Eastern Municipal Power Agency/Use of Rate Revenue

S.L. 2012-181 ([HB 1114](#)). See **Utilities**.

## Metropolitan Sewerage Districts Amendments

S.L. 2012-203 ([HB 1009](#)) alters the representation formula for metropolitan sewerage district boards and adds additional powers for such boards.

The act makes the following changes with regard to representation upon expansion of an existing metropolitan sewerage district board:

- Clarifies how the population is determined for the purpose of additional appointment by a municipality and reduces the trigger for additional appointments to one-half of the combined population, rather than greater than the remaining combined population.
- Clarifies that the population figure used for determining appointments upon creation or expansion is the most recent federal decennial census.
- Specifies that in determining appointments based upon population, only the population within the metropolitan sewerage district, and not that of the entire political subdivision, should be used.
- Provides that any political subdivision not operating a public system for wastewater collection at the time of an appointment is not entitled to appoint a member when determining board representation.

The act also expands the powers of the metropolitan sewerage district to include all of those granted to a metropolitan water district.

This act became effective July 1, 2012, and applies to appointments made on or after that date. (EC)



*Chapter 13*  
*Military, Veterans', and Indian Affairs*

Karen Cochrane-Brown (KCB), Tim Hovis (TH), Howard Alan Pell (HAP)

**Enacted Legislation**

**Military and Veterans' Affairs**

**Active Duty Death/Lease Termination**

S.L. 2012-64 ([HB 971](#)) allows a lease to be terminated when a service member dies on active duty. An immediate family member or an estate representative may terminate the lease by providing specifically described documentation to the landlord. The act provides notice requirements and the effective date for the termination. The termination also ends any lease obligations of any cotenants who are family members. Lease obligations of cotenants who are not family members are not terminated.

This act became effective June 26, 2012. (HAP)

**Study Tuition Cost for Veterans**

S.L. 2012-142, Sec. 9.1 ([HB 950](#), Sec. 9.1). See **Education**.

**Motorcycle Insurance Discount/Military**

S.L. 2012-176 ([HB 1044](#)) allows insurers to apply for and use a downward deviation in motorcycle insurance rates for members of the military who have taken and passed a motorcycle safety program that is (1) comparable to the Motorcycle Safety Instruction Program offered by the community college system, and (2) taught by a federally certified instructor. Before it may be used, the downward deviation first must be approved by the Commissioner of Insurance; however, no insurer is required to provide the discount.

This act becomes effective October 1, 2012, and applies to policies issued or renewed on or after that date. (TH)

**Identify Student Needs/Military Family**

S.L. 2012-194, Sec. 55 ([SB 847](#), Sec. 55). See **Education**.

**Licensure by Endorsement/Military/Spouses**

S.L. 2012-196 ([HB 799](#)) allows military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive occupational licenses in this State. The applicants must meet requirements, either in the military or in another jurisdiction, that are substantially equivalent to or exceed the State requirements for licensure. State occupational licensing boards are required to issue occupational licenses to military-trained applicants and military-spouse applicants who meet the statutory requirements. The boards are also authorized to issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued. The term "occupational licensing board" does not include State agencies staffed by full-time State

employees who issue licenses as part of their regular duties. However, the act specifies that it does apply to the State Board of Education in the issuing of teacher licenses.

The act does not apply to the practice of law or to the North Carolina Medical Board. However, the act directs the Legislative Research Commission to study the issue of allowing licensure by the North Carolina Medical Board in this manner and report to the General Assembly upon the convening of the 2013 Regular Session.

This act became effective July 24, 2012, and each occupational licensing board is required to implement the new law within one year of the effective date. (KCB)

## Indian Affairs

### Authorize Indian Gaming/Revenue

S.L. 2012-6 ([SB 582](#)) authorizes specific types of gambling on Indian lands when conducted pursuant to a State-Tribal Compact (Compact), and requires that if the Compact includes revenue sharing from gaming the State's share is deposited into the newly-established Indian Gaming Education Revenue Fund (IGERF). The act also prohibits a Compact from authorizing more than three gaming facilities on Indian lands.

- **Gambling.** – The types of gambling authorized by this act are:
  - *Gaming Machines.* – A gaming machine is defined as one that meets the definition of "slot machine" under State law; or a "gaming machine" or "gambling device" under federal law.
  - *Live table games.* – Live table games are defined as games that utilize non-electric cards, dice, chips, or equipment in the play and operation of the games.
  - Raffles, as defined by State law.
  - Video games, as defined by State law.
- **Education Revenue Fund.** – The act establishes the non-reverting IGERF in the State Treasury, and provides that:
  - Funds must be expended only from the IGERF by specific appropriation.
  - Funds received by the IGERF are deemed appropriated as received to the State Public School Fund for quarterly allotment by the State Board of Education to local school administrative units, charter schools, and regional schools.
  - Funds received by local school administrative units are to be spent for classroom teachers, teacher assistants, classroom materials or supplies, or textbooks.

This act became effective June 6, 2012. (HAP)



## Chapter 14

# Occupational Boards and Licensing

Karen Cochrane-Brown (KCB), Harrison Moore (HM), Wendy Graf Ray (WGR), Barbara Riley (BR)

### **Enacted Legislation**

#### **Appraisal Management Companies Reported to Department of Revenue**

S.L. 2012-65 ([HB 1028](#)) requires the North Carolina Appraisal Board to report annually to the Department of Revenue (Department) information collected from appraisal management companies during the registration process. Specifically, the act requires the following information be reported annually to the Department: name, address, process agent if any, type of entity, employer identification number or social security number, and North Carolina Secretary of State identification number if any.

This act became effective June 26, 2012. (BR)

#### **Provisional Licensure Changes Medicaid**

S.L. 2012-72 ([HB 1081](#)). See **Health and Human Services**.

#### **Exempt Occupational Licensing Boards from Paying for Audits under Certain Circumstances**

S.L. 2012-142, Sec. 17.1 ([HB 950](#), Sec. 17.1) removes the requirement that occupational licensing boards pay for audits conducted by the State Auditor from the funds of the audited licensing board.

This section became effective July 1, 2012. (BR)

#### **Sole Source Education Requirements/Bail Bondsmen**

S.L. 2012-183 ([SB 738](#)) requires the North Carolina Bail Agents Association to provide pre-licensing education and continuing education for bail bondsmen and runners. Courses and course instructors, as well as regulation of bail bondsmen, will continue to be supervised by the Commissioner of Insurance, as required under current law.

This act becomes effective October 1, 2012. (KCB)

#### **Irrigation Contractors**

S.L. 2012-194, Sec. 65.8 ([SB 847](#), Sec. 65.8) allows experienced irrigation contractors to become licensed without the requirement of examination. To qualify for the exemption, a person must document ten years in business as an irrigation contractor as of January 1, 2009, document competency in the practice of irrigation construction or irrigation contracting, and meet all other requirements and qualifications for licensure. The Irrigation Contractors' Licensing Board must notify the North Carolina Cooperative Extension of the exemption for experienced irrigation contractors as soon as possible after the section becomes effective.

This section became effective July 17, 2012. (BR)

## Hearing Aid Dealers and Fitters

S.L. 2012-194, Sec. 66 ([SB 847](#), Sec. 66) corrects a drafting error that occurred when the hearing aid dealers and fitters licensing law was amended in 2011. The 2011 act amended the circumstances under which apprenticeship requirements could be waived. However, it incorrectly stated that the one-year apprenticeship requirement "shall not be waived," rather than "shall be waived," and incorrectly set out the specific circumstances under which the applicant would be eligible for a waiver. This section corrects the language and sets out the circumstances under which the apprenticeship shall be waived.

This section became effective July 17, 2012. (WGR)

## No Sex Offender as Funeral Director

S.L. 2012-194, Sec. 71 ([SB 847](#), Sec. 71) prohibits the Board of Funeral Service from issuing or renewing any license, permit, or registration of a person convicted of a sexual offense against a minor or convicted in another jurisdiction for an offense having substantially similar elements. In addition, the Board is required to impose a sanction equal to or more severe than that imposed by another jurisdiction upon any licensee whose license, permit, or registration has been revoked or suspended or who has been placed on probation in that jurisdiction, because of a felony conviction other than for a sexual offense against a minor or because of conduct related to fitness to practice.

This section became effective July 17, 2012. (WGR)

## Extend Deadline for Requiring Licensure of Natural Hair Care Specialists

S.L. 2012-194, Sec. 71.6 ([SB 847](#), Sec. 71.6) extends the time frame within which a natural hair care specialist must become licensed. In 2009, the General Assembly amended the Cosmetic Art Act to require the licensure of persons engaged in the practice of natural hair care. However, the act provided for a one-year grace period for a natural hair care shop to comply with licensing requirements if the shop submitted proof that it was actively engaged in the practice of natural hair care on the effective date of the act. The act was amended in 2011 to extend the grace period to two years. This act extends the grace period to five years, giving those shops until July 1, 2015, to comply.

This section became effective July 17, 2012. (WGR)

## Dentistry Management Arrangements

S.L. 2012-195 ([SB 655](#)). See **Health and Human Services**.

## Licensure by Endorsement/Military/Spouses

S.L. 2012-196 ([HB 799](#)). See **Military, Veterans', and Indian Affairs**.

## Chapter 15

# Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Shelly DeAdder (SD), Kory Goldsmith (KG),  
Brad Krehely (BK), Bill Patterson (BP), Barbara Riley (BR)

## **Enacted Legislation**

### **Landlord Tenant Law Changes**

S.L. 2012-17 ([HB 493](#)) amends the laws related to landlord-tenant relationships in the following ways:

- Amends the statute requiring the posting of a bond pending appeal from the decision of the district court on summary ejectment, by requiring that if during the pendency of the appeal the tenant fails to make rent payments within five days of when the rent is due, the Clerk of Superior Court, on application of the landlord, must issue a writ of possession and the sheriff will dispossess the tenant.
- Provides that if a tenant abandons personal property valued at \$750 or less (increased from \$500 or less), the landlord may deliver the property to certain nonprofit organizations if the nonprofit agrees to identify, store, and release the property to the tenant at no charge within a 30-day period.
- Provides that after an eviction, if the property is valued at less than \$500 (increased from less than \$100), it will be deemed abandoned after 5 days and the landlord may dispose of the property.
- Provides that in an action for summary ejectment based on the tenant doing or omitting an act for which the lease may be terminated, the lease may provide both of the following:
  - The landlord's acceptance of partial rent or partial housing subsidy payment does not waive the tenant's breach.
  - The landlord's exercise of this authority is not an unfair and deceptive trade practice.
- Provides that a security deposit for a residential dwelling may be used for any of the following:
  - Damage to or destruction of smoke detectors or carbon monoxide detectors.
  - Fees of commissions paid by the landlord to a licensed real estate broker to re-rent after a tenant's breach.
  - Late fees, complaint-filing fees, court appearance fees, and second trial fees.
- Provides that a vacation rental agreement for a residential property may include a cleaning fee.
- Creates a procedure allowing landlords to remove the personal property of a tenant who dies without readily available family or others to handle his or her estate.

This act becomes effective October 1, 2012, and applies to all actions for summary ejectment filed on or after that date and to personal property owned by a tenant who dies on or after that date. (BK)

### **Register of Deeds/Directed Trustees/Estates**

S.L. 2012-18 ([HB 707](#)), as amended by S.L. 2012-194, Sec. 54 ([SB 847](#), Sec. 54), amends several provisions of the law relating to the register of deeds office, vital records, trustees' and decedents' estates, and the authority of the Revisor of Statutes. The act makes

technical amendments to the duties of the Register of Deeds, eliminating redundant requirements and conforming them to current indexing standards, effective July 1, 2012. The act amends the fee provisions for local agency vital records searches using the State Registrar database. Local agencies must charge and remit \$14 to the State Registrar and must charge and retain \$10 if a copy of the record is made. The \$10 charge may be waived when the copy is issued to a person over the age of 62, effective July 1, 2012. The act makes technical corrections to the laws governing trustees and decedents' estates and clarifies and limits the liability of trustees and other fiduciaries required by the governing instruments to take directions from others.

Except as otherwise provided, this act became effective June 11, 2012. (BR)

## Street Gang Nuisance Abatement

S.L. 2012-28 ([HB 673](#)) creates the North Carolina Street Gang Nuisance Abatement Act. A street gang that engages in criminal street gang activity at least 5 times within a 12-month period is a public nuisance.

**Enjoining of a Street Gang Member.** – A person who regularly associates with others to engage in criminal street gang activity may be made a defendant in a suit. If the court finds the existence of a public nuisance, a defendant may be enjoined from engaging in criminal street gang activity, and the court may impose other reasonable requirements to prevent the defendant, or the gang with whom the defendant is associated, from further criminal street gang activity. The injunction expires one year after entry, but may be vacated earlier by motion of any party if it appears to the court that the defendant is no longer engaged in criminal street gang activities.

**Abatement of Property.** – Any real property used, owned, maintained, or leased by a criminal street gang for criminal street gang activity is declared a public nuisance and subject to abatement. This provision does not apply if the owner or person in legal possession of the property does not have actual knowledge of the use of the property for criminal street gang activity or is being coerced into allowing the property to be used for criminal street gang activity. The act repeals the statute that previously pertained to abatement of property used for street gang activity.

This act becomes effective October 1, 2012, and applies to offenses committed and abatement actions commenced on or after that date. (SD)

## Active Duty Death/Lease Termination

S.L. 2012-64 ([HB 971](#)). See **Military, Veterans', and Indian Affairs**.

## Passing Title by Will

S.L. 2012-68 ([HB 1066](#)) separates and puts into a more logical order the provisions applicable to where and when a will may be submitted for probate (Chapter 28A of the General Statutes) and the provisions applicable to the effect of probating a will upon the property of a decedent (Chapter 31 of the General Statutes), as recommended by the General Statutes Commission. The act also consolidates into one section the provisions applicable to the effect of probate upon the rights of lien creditors and purchasers for value of a decedent's real property from the decedent's heirs-at-law, both for wills probated in the county where the property is located and for wills initially probated in another county. The act also clarifies the extent of the protections given lien creditors and purchasers for value from a decedent's heirs. When the protections apply, they are extended to all lien creditors and purchasers for value, rather than just "innocent" purchasers for value, making these protections consistent with the protections given to lien creditors and purchasers for value under the law governing the recording of deeds.

This act becomes effective October 1, 2012, and applies to estates of decedents dying on or after that date. (KCB)

## **Co-owners/Unequal Shares/Simultaneous Death**

S.L. 2012-69 ([HB 1067](#)) conforms a provision of the Revised Uniform Simultaneous Death Act to a 2009 change in law relating to survivorship in joint tenancy (S.L. 2009-268), as recommended by the General Statutes Commission. This act clarifies that interests in a joint tenancy with a right of survivorship may be held in unequal shares.

The act also provides that joint tenancy interests among two or more joint tenants holding property in joint tenancy with right of survivorship are subject to the requirement of survival by 120 hours upon the death of one or more of the joint tenants. The requirement also applies to the division of joint tenancy interests upon the death of one joint tenant.

This act becomes effective October 1, 2012. (KCB)

## **Intestate Property/Child's Year's Allowance**

S.L. 2012-71 ([HB 1069](#)) amends the statutes governing intestate succession as follows:

**Surviving Spouse's Share of Personal Property.** – The minimum amount of personal property that passes to a surviving spouse where the intestate is survived by one or more children or lineal descendants is increased from \$30,000 to \$60,000. The minimum amount of personal property that passes to a surviving spouse where the intestate is survived by one or more parents but no children or lineal descendants is increased from \$50,000 to \$100,000.

**Child's Year's Allowance.** – The surviving child's year's allowance is increased from \$2,000 to \$5,000. The term "widow" is changed to "surviving spouse" throughout the applicable statutes to ensure that both a widow and a widower may receive a child's year's allowance on the child's behalf.

**Authority of a Next Friend.** – A "next friend" may act on behalf of a surviving child in the same manner as a guardian.

The provision of this act relating to the change in terminology from widow to surviving spouse and the provision relating to the authority of a next friend became effective June 26, 2012. The remainder of this act becomes effective January 1, 2013, and applies to estates of persons dying on or after that date. (SD)

## **Landlord/State Bar Notice of Lease Default**

S.L. 2012-76 ([SB 518](#)) requires a landlord to notify the North Carolina State Bar (State Bar) at least 15 days before destroying or discarding any potentially confidential client files left behind by the tenant if the landlord knows the tenant was an attorney and the landlord has taken possession of the leased property. During the 15-day period, the landlord may move the materials to another location for storage and must allow the State Bar, or its designee, to retrieve the materials. If the materials are not retrieved by the tenant or the State Bar within the 15 days, the landlord may destroy or discard the materials. A landlord who attempts in good faith to comply with the notification requirement is not liable to any person for resulting losses. Failing to comply with the requirement is not an unfair trade practice.

This act becomes effective October 1, 2012. (KG)

## **Rental Property/Lithium Battery Smoke Alarms**

S.L. 2012-92 ([SB 77](#)), as amended by S.L. 2012-194, Sec. 50 ([SB 847](#), Sec. 50), requires a landlord who installs or replaces a smoke alarm after December 31, 2012, to use a 10-year lithium battery smoke alarm, unless the dwelling is equipped with a hardwired smoke alarm with

battery backup or a smoke alarm that is combined with a carbon monoxide alarm. Tenants are not required to replace the batteries on 10-year lithium battery smoke alarms.

This act becomes effective December 31, 2012. (KG)

## **Mortgage Satisfaction Forms/No False Liens**

S.L. 2012-150 ([HB 203](#)) does all of the following:

- Provides alternative forms for a secured creditor's satisfaction of a security instrument and a trustee's satisfaction of a deed of trust. The forms are available for those who would like to indicate that the underlying obligation secured by the instrument or by the deed of trust has been extinguished.
- Increases the penalty for simulating court process in connection with the collection of a claim, demand, or account to a Class I felony (was a Class 2 misdemeanor).
- Makes it a Class I felony to knowingly file a false lien or encumbrance against the real or personal property of a public officer or public employee.
- Increases the penalty for filing a false security agreement to a Class I felony (was a Class 2 misdemeanor).
- Provides that it is a violation of the Residential Mortgage Fraud Act for a person to knowingly file a document falsely claiming that a mortgage loan has been satisfied or discharged.

The provisions of this act dealing with satisfaction forms become effective October 1, 2012, and apply to satisfactions filed on or after that date. The criminal provisions of this act become effective December 1, 2012, and apply to offenses committed on or after that date. (BK)

## **Modify Taxation of Homeowners Association Property**

S.L. 2012-157 ([HB 1105](#)). See **Finance**.

## **Mechanics Liens/Private Lien Agent**

S.L. 2012-158 ([SB 42](#)), as amended by S.L. 2012-194, Sec. 65.3 ([SB 847](#), Sec. 65.3), requires persons furnishing labor or materials for real property improvements costing at least \$30,000 to give notice to a lien agent designated by the owner either before recordation of a deed or deed of trust, or within 15 days of their first furnishing of labor or materials, in order to preserve their lien claims. The act also provides that a subcontractor's rights cannot be prejudiced by a contractor's actions once the subcontractor gives notice to the lien agent and serves the owner with a notice of claim of lien on funds with a copy delivered to the lien agent.

S.L. 2012-194, Sec. 65.3(b) ([SB 847](#), Sec. 65.3(b)) enacted contingent on the passage of both HB 1052 and SB 42, amends statutory language added by S.L. 2012-175 ([HB 1052](#)) to conform to subsequent changes made by this act.

This act becomes effective April 1, 2013, and applies to improvements to real property upon which labor or materials are first furnished on or after that date. (BP)

## Rule in Dumpor's Case/Broker Price Opinions

S.L. 2012-163 ([SB 521](#)). See **Commercial Law and Consumer Protection**.

## Mechanics Liens/Payment Bond Reforms

S.L. 2012-175 ([HB 1052](#)) makes a number of technical and substantive changes to the law governing mechanics liens and payment bond claims arising from improvements to real property, including the following:

- Requires persons working on a public construction project who did not contract directly with the contractor to give the contractor notice of their involvement in the project in order to preserve claims under the payment bond in excess of \$20,000.
- Increases a contractor's liability for making a false written statement of the sums due for improvements to real property.
- Clarifies when certain subcontractor lien claims arise to prevent loss of subcontractor lien rights under bankruptcy court interpretation of current statutory language.
- Clarifies the circumstances under which owners or their lenders are not necessary or proper parties to an action to enforce a claim of lien on the improved real property.
- Deletes references to "registered mail" in various notice requirements contained in Chapter 44A of the General Statutes.

The provisions of this act relating to necessary or proper parties and deleting references to "registered mail" became effective July 12, 2012. The remaining provisions of this act become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, apply to improvements to real property commenced on or after that date.  
(BP)





## **Joint Resolutions**

### **Adjourn Reconvened Session**

Res. 2012-1 ([SB 794](#))

### **Honor Veterans**

Res. 2012-2 ([HB 1033](#))

### **Confirm Tamara Nance to Industrial Commission**

Res. 2012-3 ([HB 1034](#))

### **Resolution Honoring Specialist Elliott**

Res. 2012-4 ([HB 1007](#))

### **Honor Senator Bob Carpenter**

Res. 2012-5 ([SB 865](#))

### **Honor North Carolina United Service Organizations**

Res. 2012-6 ([HB 932](#))

### **Honor State Library's 200th Anniversary**

Res. 2012-7 ([HB 1223](#))

### **Honor Bill Ives**

Res. 2012-8 ([HB 1224](#))

### **Honor Jim Forrester**

Res. 2012-9 ([SB 958](#))

### **Honor Bob Shaw**

Res. 2012-10 ([SB 960](#))

## **Honor Kinston's 250th Anniversary**

Res. 2012-11 ([HB 1233](#))

## **Adjournment Sine Die**

Res. 2012-12 ([SB 961](#))

## Chapter 17

### Retirement

Karen Cochrane-Brown (KCB), Sara Kamprath (SK), Theresa Matula (TM)

### **Enacted Legislation**

#### **Firemen's Relief Fund/Board Membership**

S.L. 2012-45 ([SB 929](#)). See **Local Government**.

#### **Remove Restriction/Firefighter Disability**

S.L. 2012-82 ([SB 869](#)) amends the Local Governmental Employees' Retirement System to allow firemen and rescue squad workers with less than one year of creditable service to qualify for disability retirement benefits.

This act became effective July 1, 2012. (SK)

#### **Retirement Technical Changes**

S.L. 2012-130 ([SB 804](#)) makes technical and conforming changes to statutes affecting the following public employee retirement systems: Local Government Employees' Retirement System (LGERS), Teachers' and State Employees Retirement System (TSERS), Legislative Retirement System (LRS), and the Consolidated Judicial Retirement System (CJRS). The changes include the following:

- Reduces from 90 to 30 days the period of time during which an employee of a unit of local government can elect to opt out of LGERS when the employer begins participation.
- Specifies for LGERS and TSERS that all assumptions used by the actuary, including mortality tables, interest rates, annuity factors, and employer contribution rates, must be set out in the actuary's periodic report and materials provided to the Board of Trustees (Board). Once accepted by the Board, these materials and the related Board minutes become part of the Plan documentation governing each retirement system.
- Provides that for LGERS and TSERS, creditable service for unused sick leave can be granted only if the leave accrued monthly during employment in accordance with a duly adopted sick leave policy and could have been used without restriction. Under TSERS, unused sick leave cannot be credited if the last day of service is more than five years prior to retirement. Under TSERS, any agency with a sick leave policy more generous than that provided by Office of State Personnel rules must proportionately adjust leave for retiring employees. For members of LGERS, unused sick leave may not be credited if the last day of actual service is more than 365 days prior to retirement.
- Conforms State law for the LRS, LGERS, TSERS, and CJRS to the requirements of the Internal Revenue Code and federal regulations.
- Clarifies that if the designated beneficiary of the survivor's alternate benefit under the LRS dies before receiving an amount equal to the amount of the accumulated contributions over the total retirement allowance, then the balance must be paid in a

lump sum to a living contingent beneficiary designated by the member. Otherwise, the payment must be made to the beneficiary's legal representative.

- Clarifies in TSERS that the definition of the term "teacher" applies to an individual who works 30 or more hours per week for 9 or more months per calendar year.
- Adds language to explicitly identify LRS, LGERS, TSERS, and CJRS as governmental plans under the Internal Revenue Code and federal regulations.
- Amends the trustee voting rights laws for both LGERS and TSERS to specify that a vote may be taken only if at least seven members of the Board are in attendance, in person, or by telephone.
- Changes a reference to the Health Premium Reserve Account in the law governing the State Treasurer's investment authority to the Retiree Health Benefit Fund.

This act became effective July 1, 2012. (KCB)

## **Optional Retirement System/Forfeiture Funds**

S.L. 2012-142, Sec. 25.11 ([HB 950](#), Sec. 25.11) provides that the forfeitures associated with the Optional Retirement Program (ORP) must be retained in the ORP. The forfeitures must be used only for the exclusive benefit of the ORP participants and their beneficiaries, including reasonable and necessary expenses of plan administration.

This section became effective July 1, 2012. (SK)

## **Expand Optional Retirement Program for University of North Carolina System**

S.L. 2012-142, Sec. 25.12 ([HB 950](#), Sec. 25.12) expands participation in the Optional Retirement Program for The University of North Carolina to University employees eligible for membership in the Teachers' and State Employees Retirement System and hired on or after January 1, 2013.

This section became effective July 1, 2012. (TM)

## **Retirement Administrative Changes**

S.L. 2012-178 ([SB 803](#)) makes the following administrative changes pertaining to the various retirement systems:

- Clarifies that, of the information supplied to the Fiscal Research Division, direct online read-only access does not include access to medical records of individual members, or to tax records and other tax-related documents of members and beneficiaries.
- Clarifies that the determination of whether there are sufficient gains to cover a postretirement increase in the Local Government Employees' Retirement System (LGERS) resides exclusively with the Board of Trustees (Board). In considering whether to grant a post-retirement increase, the Board must take into account both the rate of inflation as determined by the Consumer Price Index (CPI) and the record of investment gains or losses during the preceding three-year period. Notwithstanding the linkage between CPI and increases in benefits determined by the availability of investment gains, the Board may consider a CPI increase, if any, and fund from investment gains a cost-of-living increase in a percentage amount measured by 1/10 of 1% up to 4%.
- Amends the law on accrued liability contributions to the Local Government Employees' Retirement System Pension Accumulation Fund to allow the Board of Trustees to vary the length of the period of payment for each employer as a result of actuarial valuations.

- Amends the deductions for payment sections in the Legislative Retirement System (LRS), LGERS, Teachers' and State Employees Retirement System (TSERS), and Consolidated Judicial Retirement System (CJRS) to allow a beneficiary to authorize a monthly deduction for coverage to be paid to the State Health Plan. Also allows a beneficiary to authorize the deduction for supplemental voluntary insurance benefits, so long as the deduction is authorized by the Department of State Treasurer and payable to a company with which the Department of State Treasurer has a contractual relationship.
  - Makes an adjustment in the Disability Income Plan that was necessary due to the retirement vesting changes contained in the State Pension Plan Solvency Reform Act (S.L. 2011-232).
  - Allows the assets of the Retiree Health Benefit Fund to be invested in the same manner as the assets of the TSERS, CJRS, LGERS, LRS, Firemen's and Rescue Workers' Pension Fund, and the North Carolina National Guard Pension Fund.
- This act became effective July 1, 2012. (TM)

## **Stop Waste, Fraud, and Abuse in Government Act**

- S.L. 2012-185 ([HB 1074](#)) makes the following changes:
- Adds whistleblower protection and relief to the Local Government Employees' Retirement System (LGERS).
  - Adds to the LGERS and Teachers' and State Employees Retirement System (TSERS) the definitions of "fraud investigation" and "authorized representatives who are assisting the Retirement Systems Division staff."
  - Provides access to documents and property related to a fraud investigation, authorizes the provision of a beneficiary's social services and medical services records, establishes the retention period for fraud reports, and provides that the identity of the person reporting fraud is confidential in LGERS and TSERS.
  - Prohibits the improper receipt of a decedent's monthly benefit under the Disability Income Plan of North Carolina.
  - Allows the LGERS and the TSERS Boards of Trustees to structure appointment requirements and term durations for medical board members.

The portion of the act that prohibits improper receipt of a decedent's monthly benefit becomes effective December 1, 2012, and applies to acts committed on or after that date. The remainder of the act became effective July 1, 2012. (TM)

## **No Public Retirement for Convicted Felons**

S.L. 2012-193 ([HB 153](#)) amends the State's public retirement systems (Teachers' and State Employees Retirement System, Local Government Employees' Retirement System, Consolidated Judicial Retirement System, and Legislative Retirement System), the Optional Retirement Programs for The University of North Carolina and Community Colleges, and the supplemental retirement plans for State and local governmental law-enforcement officers, to establish retirement benefit restrictions for members convicted of any felony under federal or State law for acts committed after December 1, 2012, if the offense is committed while in service and the conduct resulting in the conviction is directly related to the member's office or employment. The impact of the benefit restriction depends on whether the member vested on or after December 1, 2012.

This act becomes effective December 1, 2012, and applies to offenses committed on or after that date. (TM)



## Chapter 18

### State Government

Denise Huntley Adams (DHA), Erika Churchill (EC), Karen Cochrane-Brown (KCB), Shelly DeAdder, (SD), Kory Goldsmith (KG), Brad Krehely (BK), Theresa Matula (TM), Harrison Moore (HM), Giles S. Perry (GSP), Patsy Pierce (PP), Barbara Riley (BR), Susan L. Sitze (SLS)

### Enacted Legislation

#### **Authorize Indian Gaming/Revenue**

S.L. 2012-6 ([SB 582](#)). See **Military, Veterans', and Indian Affairs**.

#### **Modernize North Carolina Emergency Management Act**

S.L. 2012-12 ([HB 843](#)) recodifies the statutes concerning emergency management. The act centralizes the major provisions of the statutes pertaining to emergencies and disasters, provides for uniform terminology throughout, and harmonizes the emergency management laws across the levels of government. The act repeals the Class 1 misdemeanor offense of transporting or possessing a dangerous weapon or substance in an area in which there is a state of emergency or riot. The act clarifies that the power of municipalities and counties to enact ordinances to deal with emergencies and restrictions involving dangerous weapons and substances does not authorize restrictions on lawfully possessed firearms or ammunition.

This act becomes effective October 1, 2012. (BR)

#### **Adopt State Butterfly; Festivals**

S.L. 2012-29 ([SB 236](#)) adopts the Eastern tiger swallowtail as the official State butterfly; designates the Shelby Livermush Festival as the official State fall livermush festival and the Marion Livermush Festival as the official State spring livermush festival; and designates the Swansboro Mullet Festival as the official State mullet festival.

This act became effective June 15, 2012. (SD)

#### **Building Code Inspections/Industrial Machinery**

S.L. 2012-34 ([HB 813](#)) expands the definition of industrial machinery exempt from building code inspection to include equipment and machinery acquired by a State-supported center providing testing, research, and development services to manufacturing clients. The exemption applies to regulation of the design, construction, location, installation, or operation of the machinery.

This act became effective June 20, 2012. (BR)

#### **Partnership for Children Participant Records**

S.L. 2012-67 ([HB 1056](#)) amends the State's Public Records Act to exclude from the definition of public record the following information about minors participating in programs funded by the North Carolina Partnership for the Children, Inc. and similar local partnerships: name, address, age, date of birth, telephone number, name or address of that minor's parent or legal guardian, and any other identifying information.

This act became effective June 26, 2012. (EC)

## **Continue Local Food Advisory Council**

S.L. 2012-75 ([SB 491](#)). See **Agriculture and Wildlife**.

## **Effective Utilization of Program Evaluation Division**

S.L. 2012-80 ([SB 841](#)) provides that a bill or resolution proposing a study or evaluation by the General Assembly's Program Evaluation Division (PED) must have an impact statement indicating whether PED has adequate and sufficient resources to undertake the study as part of its current annual work plan. The impact statement must be requested by the sponsor of the legislation and must be prepared by PED within two weeks, unless the sponsor agrees to an extension of time. If the impact statement is not prepared within the applicable time period, the requirement will be waived. Unless the requirement is waived, the impact statement must be attached to the legislation before it is reported favorably by a committee. No item will become part of the current PED annual work plan unless the impact statement requirement has been met or waived. In all other cases, the study or evaluation will be included in the annual work plan for the following year, and one year will be added to any required reporting dates included in the legislation.

This act became effective June 26, 2012. (SLS)

## **Department of Public Safety Changes/Transfer Evidence Warehouse to Department of Public Safety**

S.L. 2012-83 ([SB 881](#)), as amended by S.L. 2012-194, Sec. 21(b) ([SB 847](#), Sec. 21(b)), makes various changes to the statutes governing the Department of Public Safety and transfers the State evidence warehouse to the Department of Public Safety.

The act makes the following changes applicable to the Department of Public Safety:

- Amends the criminal statute on secret peeping to exclude actions taken by personnel of the Division of Juvenile Justice for security purposes or during investigation of misconduct.
- Gives the Secretary of Public Safety the sole discretion to establish the minimum experience requirements for probation officers and directs the Office of State Personnel to work with the Secretary to establish position classifications for probation officers based on those requirements.
- Authorizes the Director of the Alcohol Law Enforcement Section, pursuant to adopted rules, to shift forces among districts or consolidate districts.
- Authorizes the Department of Justice to provide criminal record checks to the Department of Public Safety for independent contractors or volunteers providing direct care for a client, patient, student, resident, or ward of the Division of Juvenile Justice.
- Authorizes the Department of Public Safety to designate at least one, but no more than five, liaison personnel.
- Authorizes the Governor to designate up to 1% of the total number of full-time positions in the Department of Public Safety, not to exceed 100 positions, as exempt managerial positions, and increases by 5 the number of exempt policy-making positions, so long as the number of exempt policy-making positions does not exceed 105. *NOTE:* These changes were modified by S.L. 2012-142, Sec. 25.2E ([HB 950](#), Sec. 25.2E). See **Labor and Employment** for an explanation of those modifications.



- Specifies that the Chief Deputy Secretary for the Division of Adult Correction is responsible for alcoholism and chemical dependency treatment, offender records management, extradition, and other specified duties.
- Requires the Division of Adult Correction to establish an Alcoholism and Chemical Dependency Treatment Program (Program) in a manner that is consistent with the current administration of the Program.
- Defines the parameters of the Program and designates the Section Chief for the Program as the director of the Program.
- Authorizes the appointment of a chief deputy secretary to head the Division of Adult Corrections.
- Authorizes the appointment of a chief deputy secretary to head the Division of Juvenile Justice. The Chief Deputy Secretary has the authority to appoint the chief court counselor in each district.
- Requires that the Division of Juvenile Justice must develop and implement a comprehensive juvenile delinquency and substance abuse prevention plan.
- Repeals a requirement for the Department of Public Safety to create regional offices in the Division of Law Enforcement for collocation of personnel and property of the Alcohol Law Enforcement Section and the State Highway Patrol.
- Makes technical changes to statutes impacted by the consolidation of several departments into the Department of Public Safety.

The act makes the following changes concerning the State evidence warehouse:

- Repeals Section 19.1(cc) of S.L. 2011-145, which reallocated the evidence warehouse that was operated by the Law Enforcement Support Services Division of the Division of Crime Control and Public Safety to the State Crime Lab of the Department of Justice.
- Transfers the evidence warehouse to the Office of External Affairs (OEA) in the Department of Public Safety. All State-owned personal property located in or associated with the warehouse is reallocated to OEA. The warehouse is to be known as the Victim Services Warehouse. The Department of Public Safety must assume any lease on the warehouse.
- Adds the evidence warehouse and the storage and management of evidence and other contents housed in the warehouse to the responsibilities of OEA.
- Amends the powers and duties of the Department of Public Safety to include:
  - Provision of central storage and management of evidence according to the DNA Database and Databank Act of 1993 and creation and maintenance of a databank of statewide storage locations of postconviction evidence or other similar programs.
  - Provision of central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections concerning the release of names of victims providing anonymous rape kits.
  - Provision for the storage and management of evidence.

This act became effective June 26, 2012. (SLS)

## Various Emergency Management Changes

S.L. 2012-90 ([SB 798](#)) makes several changes to the North Carolina Emergency Management Act. The act extends the length of disaster declarations such that: (1) a Type I disaster declaration expires after 60 days, instead of 30; (2) a Type II disaster expires after 12 months, instead of 6 months; and (3) a Type III disaster expires after 24 months, instead of 12 months. If a federal-state aid program is created while a disaster declaration is in effect, aid may continue to flow pursuant to that agreement after the underlying disaster declaration expires. The act clarifies that immunity from liability is available for persons and entities whose property is

used during an emergency only if the property is being used subject to the order or control of or pursuant to a request of a governmental entity. The act defines the State Emergency Response Team (SERT) and amends the Division of Emergency Management to include managing SERT. The act requires that the Division of Emergency Management coordinate amendment of the State Emergency Operations Plan with the Commissioner of Agriculture with respect to agricultural matters. The act creates the Joint Legislative Emergency Management Oversight Committee, charged with examining issues of emergency management and making ongoing recommendations to the General Assembly.

The portions of this act concerning disaster declaration expiration, liability, SERT, and coordination of amendment of the State Emergency Operations Plan become effective October 1, 2012. The remainder of this act became effective June 28, 2012. (BR)

## **Art Society/Cemetery Commission/Veterinary Medical Board/Geographic Information Coordinating Council Changes**

S.L. 2012-120 ([SB 443](#)) repeals the North Carolina State Art Society, Inc. (Art Society); creates a Director's Committee to elect and supervise the Director of the North Carolina Museum of Art; makes changes to the structure and authority of the North Carolina Cemetery Commission; and makes changes to terms of service for General Assembly appointees to the North Carolina Veterinary Medical Board and the North Carolina Geographic Information Coordinating Council.

The provision of this act pertaining to the Art Society becomes effective October 1, 2012. The provision of this act pertaining to the North Carolina Veterinary Medical Board became effective June 30, 2012. The remaining provisions of this act became effective June 28, 2012. (SD)

## **North Carolina Longitudinal Data System**

S.L. 2012-133 ([HB 964](#)). See **Education**.

## **Consultation with a Legislative Committee**

S.L. 2012-142, Sec. 6.11 ([HB 950](#), Sec. 6.11) creates a new rule of statutory construction. It provides that a requirement to "consult" with a legislative committee or commission (committee) means the entity must submit a report to the chairs and staff and must appear at a meeting of the committee at which the matter is heard. Staff to the committee must make an electronic copy of the report available to all members of the committee and to the public. The requirement to appear for a meeting of the committee is satisfied if the meeting does not occur within 90 days of the required submission.

This section became effective July 1, 2012. (KG)

## **Medicaid Program Disclosures to the Fiscal Research Division**

S.L. 2012-142, Sec. 6.12 ([HB 950](#), Sec. 6.12) directs the Department of Health and Human Services (DHHS) to provide designated employees of the Fiscal Research Division (FRD) with access to all records relating to the Medicaid program, other than access to medical records of individuals and other information protected under the Health Information Portability and Accountability Act. The section requires DHHS also to provide FRD employees with electronic access to departmental data and modeling software used for assessing or predicting Medicaid financial outcomes. In addition, DHHS must provide its annual financial projection of Medicaid

program expenditures and requirements for any future fiscal years to the Chairs of the House Appropriations Committee and to the Chairs of the Senate Appropriations/Base Budget Committee no later than the date the Governor presents budget recommendations to each regular session of the General Assembly.

This section became effective July 1, 2012. (DHA)

## **State Contracts to Include Funds Availability Clause**

S.L. 2012-142, Sec. 6.13 ([HB 950](#), Sec. 6.13) amends the State Budget Act to require that any purchase order, contract, salary commitment, or other financial obligation of the State must include a clause indicating that it is subject to availability of funds. The section clarifies that any employment contract or salary commitment paid in whole or in part by State funds is subject to this limitation.

This section became effective September 1, 2012. (GSP)

## **Office of Information Technology Functions**

S.L. 2012-142, Sec. 6A.2 ([HB 950](#), Sec. 6A.2) amends the functions of the Office of Information Technology to include the provision of geographic information systems services through the Center for Geographic Information and Analysis on a cost recovery basis, and authorization to contract for funding from federal or other sources.

This section became effective July 1, 2012. (GSP)

## **Transfer Geodetic Survey Section from Department of Environment and Natural Resources to the Division of Emergency Management of the Department of Public Safety**

S.L. 2012-142, Sec. 12.4 ([HB 950](#), Sec. 12.4). See **Environment and Natural Resources, and Energy**.

## **Department of Commerce Reporting Requirement Changes**

S.L. 2012-142, Sec. 13.4 ([HB 950](#), Sec. 13.4) amends the statutory requirements for the following Department of Commerce reports: the comprehensive strategic economic development plan, clawbacks, economic development incentives, and development tiers rankings.

This section became effective July 1, 2012. (GSP)

## **Align One North Carolina Fund with Job Development Investment Grant Program**

S.L. 2012-142, Sec. 13.6 ([HB 950](#), Sec. 13.6) amends the statutes governing the One North Carolina Fund to establish a funding structure that aligns with the funding structure of the Job Development Investment Grant Program.

This section became effective July 1, 2012. (BK)

## **Wine and Grape Growers Council transferred to Department of Agriculture and Consumer Services**

S.L. 2012-142, Sec. 13.9A, as amended by S.L. 2012-145, Sec. 4.5 ([HB 950](#), Sec. 13.9A, as amended by SB 187, Sec. 4.5). See **Agriculture and Wildlife**.

## **Department of Justice Itemized Billing for Legal Services**

S.L. 2012-142, Sec. 15.1 ([HB 950](#), Sec. 15.1) requires the Department of Justice to provide itemized billing of hours and hourly rates for services rendered to a State agency, board, or commission.

This section became effective July 1, 2012. (GSP)

## **Transfer of Health Insurance Consumer Protection Unit and Managed Care Patient Assistance Program to the Department of Insurance**

S.L. 2012-142, Sec. 15.3 ([HB 950](#), Sec. 15.3), as amended by S.L. 2012-194, Sec. 55.5 ([SB 847](#), Sec. 55.5). See **Insurance**.

## **Establish Human Trafficking Commission**

S.L. 2012-142, Sec. 15.3A ([HB 950](#), Sec. 15.3A). See **Courts, Justice, and Corrections**.

## **Auditor Publish Cost of Audits**

S.L. 2012-142, Sec. 17.3 ([HB 950](#), Sec. 17.3) requires that each audit report of the State Auditor include the number of staff hours used and the total cost for conducting the audit and preparing the audit report.

This section became effective July 1, 2012. (GSP)

## **Agency Publish Cost of Certified Public Accountant Audits**

S.L. 2012-142, Sec. 17.4 ([HB 950](#), Sec. 17.4) requires that each audit report of the State Auditor prepared for a State agency by a Certified Public Accountant must include the hours used and total cost of preparing the audit and audit report.

This section became effective July 1, 2012. (GSP)

## **Contingency Contracts for Audits/Assessments**

S.L. 2012-152 ([HB 462](#)), as amended by S.L. 2012-194, Sec. 61.5 ([SB 847](#), Sec. 61.5). See **Finance**.

## State Health Plan/Statutory Changes

- S.L. 2012-173 ([HB 1085](#)) makes the following changes to the State Health Plan (Plan):
- Amends the statutory definition of “dependent child” to comply with the federal Patient Protection and Affordable Care Act.
  - Provides that an eligible surviving spouse or dependent child of a deceased retiree or employee is eligible for group benefits without a waiting period for preexisting conditions, provided coverage is elected within 90 days after the death of the former Plan member. Coverage may be elected at a later time during an annual enrollment period, however, persons 19 years of age or older may be subject to a 12-month waiting period for preexisting conditions.
  - Provides that new employees age 19 and older not enrolling themselves and their dependents age 19 and older within 30 days or other dependents not enrolled when first eligible can no longer enroll at the first of any month, but coverage must be elected during an annual enrollment period.
  - Provides that during the Plan year eligible employees only may change their elections, including adding or removing dependents, due to a qualifying event as defined under federal law.
  - Repeals the Plan's optional long-term care benefits program effective January 1, 2013.
  - Clarifies the State Treasurer has the authority to set coinsurance percentages charged under the Plan, subject to approval by the Board of Trustees.
- Except as otherwise noted, this act became effective July 1, 2012. (DHA)

## Courts and Investigations

S.L. 2012-182, ([SB 699](#)) changes the name of the Division of Criminal Statistics to the Division of Criminal Information (DCI) and allows DCI to promulgate rules and assess fees relating to the Criminal Information Network. The act recodifies the existing superior court districts used for electoral purposes using 2010 geography for elections held on or after January 1, 2013. The act also provides a process by which investigatory materials and information are to be shared between the State Ethics Commission and the Legislative Ethics Committee.

This act became effective July 12, 2012. (EC)

## Regulatory Reform Act of 2012 – Changes to Laws Affected by the Regulatory Reform Act of 2011

S.L. 2012-187, Secs. 2, 3, 4, 5, 6, 7.1, 7.2, 7.3, 8.1, 8.2 through 8.7 ([SB 810](#), Secs. 2, 3, 4, 5, 6, 7.1, 7.2, 7.3, 8.1, 8.2 through 8.7) make several technical, clarifying, and conforming changes to the laws affected by the Regulatory Reform Act of 2011, including the following:

- Clarifies that an agency may not enforce an interpretive statement that has not been adopted as a rule in accordance with the Administrative Procedure Act.
- Provides that cabinet agencies must have proposed rules certified by the Office of State Budget and Management, while Council of State agencies must obtain certification from the Rules Review Commission.
- Allows the Office of Administrative Hearings to accept payment of filing fees in contested cases after a petition has been filed.
- Clarifies that only a party, the party's attorney, or a representative that has been specifically authorized by law may sign a petition commencing a contested case.

- Authorizes administrative law judges to assess attorney's fees against an agency when the agency has acted arbitrarily or capriciously and substantially prejudiced the petitioner's rights.
- Extends the effective dates for two provisions contained in the Regulatory Reform Act of 2011. With regard to final decisions in contested cases involving federal programs administered by the Department of Environment and Natural Resources, the effective date is extended until October 1, 2012. With regard to final decisions in Medicaid cases, the effective date is extended until February 1, 2013.
- Conforms the State Personnel Act to reflect that appeals under the Act are made to the Office of Administrative Hearings rather than the State Personnel Commission.

For the provisions in S.L. 2012-187 amending State environmental policy, see **Environment and Natural Resources, and Energy.**

These sections became effective July 16, 2012. (KCB)

## **Regulatory Reform Act of 2012 – Changes to Various Provisions of State Law**

S.L. 2012-187, Secs. 9, 10.1 through 10.3, 16.1, and 16.2 ([SB 810](#), Secs. 9, 10.1 through 10.3, 16.1, and 16.2) make changes to various provisions of State law, including the following:

- Amends the Unclaimed Property Act to reduce the time during which a holder must maintain records related to unclaimed property from ten to five years.
- Directs the Department of Labor to develop an employer's notice of rights which must be presented before an inspection is conducted on premises engaged in agricultural employment. This provision became effective August 1, 2012, and applies to inspections conducted on or after that date.
- Eliminates a requirement that agencies report each year on efforts to reduce the incidence of identity theft. Instead, agencies must report to the General Assembly on any laws that impede the agencies' ability to avoid identity theft.
- Exempts Certified Roadside Farm Markets from certain building code requirements.
- Allows mobile food units that meet all sanitation requirements of a restaurant to obtain a permit without having a restaurant that serves as its base of operation.

For the provisions in S.L. 2012-187 amending State environmental policy, see **Environment and Natural Resources, and Energy.**

Except as otherwise provided, these sections became effective July 16, 2012. (KCB)

## **State Health Plan/Whistleblowers**

S.L. 2012-192, Secs. 2 through 4 ([HB 244](#), Secs. 2 through 4) amend State law concerning State Health Plan whistleblowers to:

- Provide that any provision in a contract that prohibits an employee's or contractor's ability to report wrongdoing related to the State Health Plan is void.
- Provide that it is State policy that persons are encouraged to report State Health Plan related fraud, abuse, and violations of law.
- Provide employee protection from retaliation for reporting State Health Plan related problems.
- Authorize damages, injunctive relief, and other specified remedies for violations under this act.

These sections become effective October 1, 2012, and apply to causes of action arising on or after that date. (SD)

## **Administrative Procedure Act Change**

S.L. 2012-194, Sec. 62.1 ([SB 847](#), Sec. 62.1) amends the Administrative Procedure Act to clarify that a party or person aggrieved is not required to petition an agency for rule-making or seek to obtain a declaratory ruling before obtaining judicial review of a final decision or order made in a contested case.

This section became effective July 17, 2012. (KCB)

## **Lottery Commission Changes**

S.L. 2012-194, Sec. 64 ([SB 847](#), Sec. 64) amends the Lottery Commission statutes to limit the scope of the definition of "shareholders" who are to be investigated before contracts can be awarded. The section provides that shareholders are any natural persons or individuals with capabilities to make operating decisions for potential contractors.

This section became effective July 17, 2012. (KG)

## **General Assembly One Day Organizational Session**

S.L. 2012-194, Sec. 66.5 ([SB 847](#), Sec. 66.5) provides for the convening of a one-day organizational session of the General Assembly at 9:00 a.m. on the second Wednesday in January next after their election. The section provides that the purpose of the one-day session is to elect officers, adopt rules, and otherwise organize the chambers. The section provides that upon adjournment of the initial one-day session, the General Assembly will stand adjourned until 12:00 noon on the third Wednesday after the second Monday in January next after their election. The section also amends the Administrative Procedure Act regarding the deadline for members to file bills to disallow an administrative rule.

This section became effective July 17, 2012. (KG)

## **Automatic External Defibrillators in State Buildings**

S.L. 2012-198 ([HB 914](#)) creates a Chain of Survival Public-Private Task Force (Task Force). The Task Force consists of 14 members and is charged with identifying, pursuing, and achieving funding for: (1) the placement of automatic external defibrillators (AEDs) in State buildings and (2) the training of State employees to recognize and initiate life-saving actions for those in need. If public-private funds are received, the act requires the Department of Administration to develop and adopt policies for the placement and use of AEDs in State-owned and State-leased buildings.

This act became effective July 26, 2012. (BK)

## **Studies**

### **Department of Cultural Resources and Department of Environment and Natural Resources/Study State Attractions Savings**

S.L. 2012-93 ([SB 813](#)) implements recommendations made by the Joint Legislative Program Evaluation Oversight Committee and the State Attractions Subcommittee by requiring the Departments of Cultural Resources (DCR) and Environment and Natural Resources (DENR) to study and implement specified recommendations in an effort to increase revenue and potential savings at State historic sites, museums, parks, aquariums, and the zoo. Both departments must

report no later than December 15, 2012. DCR must report to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government, and DENR must report to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

This act became effective June 28, 2012. (TM)

## **Regional Economic Development Commissions/Study**

S.L. 2012-142, Sec. 13.15 ([HB 950](#), Sec. 13.15) authorizes the Legislative Research Commission (LRC) to study the funding and alignment of the following regional economic development commissions:

- Western North Carolina Regional Economic Development Commission.
- Research Triangle Regional Partnership.
- Southeastern North Carolina Regional Economic Development Commission.
- Piedmont Triad Partnership.
- Northeastern North Carolina Regional Economic Development Commission.
- North Carolina's Eastern Region Economic Development Partnership.
- Carolinas Partnership, Inc.

The section provides that the LRC study should determine whether the commissions are adequately serving the needs of member organizations and whether there are areas in which improvement can be made.

This section became effective July 1, 2012. (KG)

## **Regulatory Reform Act of 2012 – Joint Legislative Administrative Procedure Oversight Committee**

S.L. 2012-187, Sec. 1 ([SB 810](#), Sec. 1) restores the Joint Legislative Administrative Procedure Oversight Committee, which was abolished in 2011. The Committee originally was established in 1995 to oversee the rule-making and contested case procedures of State agencies.

This section became effective July 16, 2012. (KCB)

## **Legislative Research Commission Cochairs' Designees**

S.L. 2012-194, Sec. 66.7 ([SB 847](#), Sec. 66.7) allows the Speaker of the House of Representatives and the President Pro Tempore of the Senate to appoint designees to fill their ex officio positions on the Legislative Research Commission. These designees would serve as the cochairs of the Legislative Research Commission.

This section became effective July 17, 2012. (KG)



## Chapter 19

### Transportation

Brenda Carter (BC), Giles S. Perry (GSP), Kelly Quick (KQ),  
Wendy Graf Ray (WGR), Susan L. Sitze (SLS)

### **Enacted Legislation**

#### **Allow Department of Transportation to Use Recycled Asphalt**

S.L. 2012-8 ([HB 821](#)) specifically authorizes the Department of Transportation to use recycled asphalt for highway construction and maintenance, so long as all content standards and project specifications are met.

This act became effective June 7, 2012. (WGR)

#### **Modify Move-Over Law**

S.L. 2012-14 ([HB 345](#)) modifies the State's move-over law that requires drivers to move over or to slow down when approaching certain emergency vehicles and public service vehicles parked or standing within 12 feet of the roadway and operating a flashing light. The act amends the definition of "public service vehicle" to add the following:

- Vehicles used to install or maintain utility services (electric, cable, telephones, communications, and gas).
- Highway maintenance vehicles owned and operated by, or contracted by, the State or a local government.

This act becomes effective October 1, 2012, and applies to offenses committed on or after that date. (BC)

#### **Law Enforcement/Emergency Vehicle Length**

S.L. 2012-33 ([HB 741](#)) amends the statute providing for maximum length of vehicles on the roadways to allow law enforcement and emergency management vehicles to have a maximum allowable length of 45 feet, excluding bumpers and mirrors. This is equivalent to the current maximum length for recreational vehicles.

This act became effective June 20, 2012. (SLS)

#### **Intrastate Motor Carrier Markings**

S.L. 2012-41 ([HB 261](#)) requires intrastate motor carrier vehicles with a gross vehicle weight rating of more than 26,000 pounds to have the motor carrier's United State Department of Transportation (USDOT) identification number printed on each side of the vehicle. Under rules adopted by the Department of Public Safety, these vehicles are subject to federal motor carrier safety regulations and are required to obtain a USDOT identification number.

This act becomes effective December 1, 2012, and applies to offenses committed on or after that date. However, for the first year the act is effective, violators will be given a warning of violation only. (WGR)

## Rural Planning Organizations Area Definition

S.L. 2012-44 ([SB 889](#)) changes the area definition for a Rural Transportation Planning Organization (RPO) by allowing the area of an RPO to be either 3 to 15 counties, or have at least 50,000 persons.

This act became effective June 20, 2012. (GSP)

## Various Motor Vehicle Law Changes

S.L. 2012-78 ([SB 749](#)) makes the following changes to the State's transportation laws:

- Requires a distinguishing mark or other designation on the face of a driver's license of limited duration issued on or after January 1, 2013.
- Provides a registration exemption for any trailer or semi-trailer used by a farmer in transporting livestock, live poultry, animal waste, pesticides, or seeds and for header trailers when transported to or from a dealer, or after a sale or repairs, to the farm or another dealership.
- Requires that certain vehicles eligible for weight limit exceptions (for agricultural crops, aggregates, wood residuals, raw logs, bulk soil, bulk rock, sand, sand rock, asphalt millings, or animal waste) must be registered for the maximum weight allowed for the vehicle configuration, and provides that penalties apply to the amount by which the vehicle's maximum gross weight exceeds its declared weight.
- Allows self-propelled farm equipment to be operated on interstate highways under specified conditions after applying and obtaining approval from the North Carolina Department of Transportation (Department).
- Authorizes a light-traffic road weight exception for vehicles transporting certain agricultural products from their point of origin.
- Exempts certain vehicles from weight limitations and penalties when transporting specified agricultural and forestry-related products.
- Exempts firefighting equipment from size and weight restrictions while transporting or moving heavy equipment for emergency response and preparedness and fire prevention, providing specified conditions are met.
- Amends the law concerning window tinting restrictions by eliminating an exception for vehicles transporting passengers for compensation and for common carriers operating under a certificate of authority issued by the North Carolina Utilities Commission. Commercial motor vehicles subject to federal law must comply with applicable federal regulations. This provision becomes effective December 1, 2012, and applies to offenses committed on or after that date.
- Makes it unlawful for a person to operate certain commercial motor vehicles used on a highway in interstate commerce to transport passengers or property while using a mobile telephone or electronic device in violation of federal regulations. This provision becomes effective December 1, 2012, and applies to offenses committed on or after that date.
- Provides for the enforcement of motor carrier safety laws by any designated personnel of the Department of Public Safety.
- Specifies that bids and documents submitted in response to an advertisement or request for proposal by the Department do not become public records until the Department issues a decision concerning award of the contract. This provision became effective July 1, 2012, and applies to bids and documents submitted for advertisements and requests for proposal advertised or requested on or after that date.
- Requires the North Carolina Turnpike Authority (Turnpike Authority) to maintain the confidentiality of all information relating to electronic toll collection and provides that

statutory authority allowing State agencies to charge interest and penalties on past-due accounts does not apply to money owed to the Turnpike Authority for tolls.

- Allows the hauling of unhardened ready mixed concrete in excess of weight limits so long as the vehicle does not exceed prescribed maximum gross weight limitations.
- Authorizes the Department to permit sealed ship containers as non-divisible loads, and provides that permitting rules applied to other non-divisible loads also apply to sealed ship containers. Directs the Department to amend its rule concerning the issuance of overweight permits to vehicle combinations hauling a sealed ship container by deleting the maximum permissible weight.
- Makes provisions of the Clean Coastal Water and Vessel Act, as they apply to ferry vessels operated by Department, effective June 30, 2013.

Except as otherwise noted, this act became effective June 26, 2012. (BC)

## Special License Plate Changes

S.L. 2012-79, Sec. 1.12 ([SB 826](#), Sec. 1.12) authorizes the Mountains-to-Sea Trail, Inc. special license plates to have a design other than "First in Flight" until July 1, 2016. This section also increases the additional fee for special license plates for Morgan Horse Club and Sustainable Fisheries from \$20 to \$30.

This section became effective June 26, 2012. (SLS)

## Transportation Reform/Codify Executive Order

S.L. 2012-84 ([SB 890](#)) codifies provisions of Executive Order No. 2 by:

- Requiring the Board of Transportation to delegate to the Secretary of Transportation the authority to approve highway construction projects and plans and to award contracts.
- Requiring the Department of Transportation to develop and utilize a strategic prioritization process to be used for selection of transportation projects.
- Creating additional ethics requirements for Board of Transportation members.

This act became effective June 26, 2012. (WGR)

## Department of Transportation Division of Motor Vehicles Legislative Requests

S.L. 2012-85 ([SB 895](#)) requires that all applicants 18 or older demonstrate competence to drive a motorcycle by passing a knowledge test concerning motorcycles and either by passing a road test or providing proof of successful completion of a specified course of instruction. All applicants under 18 must pass a knowledge test and provide proof of successful completion of a specified course of instruction.

This act delays implementation of a provision authorizing the Division of Motor Vehicles (Division) to make a notation on a North Carolina drivers license showing a license holder's military veteran status; it also delays implementation of a provision requiring the Division to make a commercial drivers license and a hazardous materials endorsement expire at the same time. Both provisions become effective January 1, 2013, or the first day of the month beginning 30 days after certification that implementation of the Division's Next Generation Secure Driver License system has been completed, whichever occurs later.

This act authorizes the North Carolina Turnpike Authority (Turnpike Authority) to enter into reciprocal toll enforcement agreements with other toll agencies, authorizes a vehicle registration block for tolls and related fees or penalties owed to another tolling jurisdiction with which the Turnpike Authority has a valid reciprocal toll enforcement agreement, and sets out the requirements governing reciprocal toll enforcement agreements between the Turnpike Authority

and other tolling jurisdictions. Requirements include due process and appeal protections, and a means for the vehicle owner to present evidence by mail or other means without having to personally appear.

The motorcycle licensing provisions of this act became effective July 1, 2012. The remaining provisions of this act became effective June 26, 2012. (BC)

## **Medicaid Nonemergency Medical Transportation Services**

S.L. 2012-142, Sec. 10.7 ([HB 950](#), Sec. 10.7). See **Health and Human Services**.

## **Clarify Use of Credit Reserve Balance in Highway Fund**

S.L. 2012-142, Sec. 24.6 ([HB 950](#), Sec. 24.6) clarifies that no more than \$5 million from the unreserved credit balance in the Highway Fund may be spent on a single project, and funds used for an "other urgent need" project cannot be used for administrative costs, information technology costs, or economic development. This section also clarifies the reporting requirements, approval process, and carryforward provision for all expenditures from the reserve.

This section became effective July 1, 2012. (KQ)

## **Codify Mobility Fund Formula**

S.L. 2012-142, Sec. 24.8 ([HB 950](#), Sec. 24.8) amends the statute governing the use of the North Carolina Mobility Fund (Mobility Fund) to require that, in order to be eligible for funding from the Mobility Fund, a project must meet the following requirements:

- The project must be on statewide or regional tier facilities.
- The project must be ready to have funds obligated for construction within five years.
- The project must be consistent with metropolitan planning organization or rural transportation planning organization efforts included in an adopted transportation plan and found to be consistent with local land-use plans, where available.
- The project must be in a conforming transportation plan if the project is in a non-attainment or maintenance area.
- Only the project's capital costs, including right-of-way acquisition and construction, may be funded. Maintenance, operation, and planning costs may not be funded from the Mobility Fund.
- There is no minimum project capital cost as a threshold for funding a project.

This section provides that eligible projects be scored and ranked, with the highest scored projects receiving funding priority. The formula to be used for ranking scores is 80% mobility benefit-cost and 20% multimodal/intermodal. Mobility benefit-cost is the estimated travel time savings in vehicle hours that the project will provide over 30 years divided by the cost of the project to the Mobility Fund. Multimodal/intermodal is based on whether a project provides an improvement to more than one mode of transportation and what types of other modes of transportation are involved in the project. The Department of Transportation must provide for the assignment of points for multimodal/intermodal on a scale of 0 to 100.

This section also repeals Section 28.33(c) of the Appropriations Act of 2011, which would have transferred \$45 million to a Prioritization Reserve Fund instead of the Mobility Fund.

This section became effective July 1, 2012. (SLS)

## **Apply State Ethics Act to Metropolitan Planning Organizations and Rural Planning Organizations**

S.L. 2012-142, Sec. 24.16 ([HB 950](#), Sec. 24.16) provides that Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs) are to be treated as boards under the State Ethics Act, such that all voting members are subject to all provisions of the Act.

This section becomes effective January 1, 2013. Members of MPOs and RPOs are required to electronically file an initial Statement of Economic Interest with the State Ethics Commission no later than April 15, 2013. (WGR)

## **Ferry Tolls**

S.L. 2012-142, Sec. 24.18 ([HB 950](#), Sec. 24.18), as amended by S.L. 2012-145, Sec. 6.2, ([SB 187](#), Sec. 6.2), suspends new or increased tolls on State ferry routes for fiscal year 2012-2013.

This section became effective July 1, 2012. (GSP)

## **Department of Transportation Relocation of Municipal Utilities**

S.L. 2012-145, Sec. 6.1 ([SB 187](#), Sec. 6.1) allows the Department of Transportation (Department) to enter into agreements with municipalities to provide the necessary engineering and utility construction when exercising its statutory authority to require municipalities to relocate utilities due to a hazard or interference with a highway, and specifies the reimbursement basis for the Department's services.

This section became effective July 10, 2012. (KQ)

## **Continuous Alcohol Monitoring Law Changes**

S.L. 2012-146 ([HB 494](#)) as amended by S.L. 2012-194, Sec. 51.5 ([SB 847](#), Sec. 51.5). See **Courts, Justice, and Corrections**.

## **School Bus Crash Reports Name Disclosure**

S.L. 2012-147 ([SB 227](#)) limits the circumstances under which the name and address of a minor child involved in a school bus crash may be disclosed. This act provides that the information may be disclosed only to the following:

- The local board of education.
- The State Board of Education.
- The parent or guardian of the child.
- An insurance company investigating a claim arising out of the crash.
- An attorney representing a person involved in the crash.
- Law enforcement officials investigating the crash.

This act becomes effective October 1, 2012. (SLS)

## **Permanent License Plates**

S.L. 2012-159 ([HB 989](#)) limits the issuance of permanent registration plates to include only vehicles owned by State or local government entities, boards of education, civil air patrol,

incorporated emergency rescue squads, rural fire departments, American Red Cross, and community colleges. These entities will be issued a permanent plate with a new design by January 15, 2013, at a one-time replacement cost of \$6.

Permanent registration plates issued to non-State entities will be cancelled by January 15, 2013, and those entities will be required to obtain a regular registration plate and pay the annual \$28 fee.

This act became effective July 1, 2012. (BC)

## **Increase Penalties/Murder and Driving While Impaired Deaths**

S.L. 2012-165 ([SB 105](#)). See **Criminal Law and Procedure**.

## **Law Enforcement/Various Other Changes**

S.L. 2012-168 ([SB 141](#)). See **Criminal Law and Procedure**.

## **Pilot Public-Private Partnerships Toll Project**

S.L. 2012-184 ([HB 1077](#)) amends the power of the Department of Transportation (DOT) to enter into public-private partnerships to finance transportation projects by requiring Local Government Commission approval of financing agreements that extend beyond 18 months. In addition, the act authorizes DOT to enter into a pilot public-private partnership for construction of an Interstate 77 high occupancy toll project, subject to specified standards for payment security, transfer of interests by the private entity, fixing of tolls, and issuance of bonds.

This act became effective July 16, 2012. (GSP)

## **Clean Energy Transportation Act**

S.L. 2012-186 ([HB 177](#)). See **Environment and Natural Resources**.

## **Vehicle Emissions Inspections**

S.L. 2012-199 ([HB 585](#)) exempts motor vehicles in their first three model years, with less than 70,000 miles, from the requirement of an emissions inspection. The North Carolina Department of Environment and Natural Resources must submit this change to the United States Environmental Protection Agency for approval as an amendment to the State Implementation Plan under the federal Clean Air Act. This act also requires the Commissioner of Motor Vehicles to certify the date the Motor Vehicle Inspection and Law Enforcement System is retired and its replacement is operational.

The emissions inspection exemption becomes effective January 1, 2014, or the first day of a month that is 30 days after the Environmental Protection Agency approves the change and the replacement of the Motor Vehicle Inspection and Law Enforcement System has been certified, whichever occurs later. The remainder of the act became effective August 1, 2012. (WGR)

## **Studies**

### **Study Interstate 95 Tolling**

S.L. 2012-142, Sec. 24.21 ([HB 950](#), Sec. 24.21) requires the Department of Transportation (DOT) to conduct a comprehensive study of the transportation corridor containing Interstate 95 and make a report to the 2013 General Assembly by March 1, 2013. This section also prohibits DOT from establishing or collecting tolls on Interstate 95 prior to July 1, 2014, except where the United States Department of Transportation has already granted permission to do so.

This section became effective July 1, 2012. (KQ)





## Chapter 20

### Utilities

Heather Fennell (HF), Peter Ledford (PL), Mariah Matheson (MM), Bill Patterson (BP)

### **Enacted Legislation**

#### **Utilities Commission/Criminal Records Check**

S.L. 2012-9 ([HB 340](#)) authorizes the Utilities Commission to obtain a criminal history record check of applicants for, and current holders of, certificates to transport household goods.

This act became effective June 7, 2012, and applies to all persons holding a current certificate of exemption or a certificate of public convenience and necessity on or after that date and to all applications for such certificates received by the Utilities Commission on or after that date. (BP)

#### **Public Safety Answering Points Technical Standards/ Habitual Misdemeanor Larceny**

S.L. 2012-132 ([SB 94](#)) delays the effective date of operating standards set by the 911 Board until January 1, 2014. The 911 Board oversees the distribution of funds to public safety answering points (PSAPs) and is authorized to adopt operating standards for PSAPs. A PSAP is the public safety agency that receives incoming 911 calls and dispatches public safety agencies in response.

This act became effective June 29, 2012. (HF)

#### **Municipal Electric Utilities/Rate Hearings**

S.L. 2012-167 ([HB 457](#)) requires municipalities that are members of the North Carolina Eastern Municipal Power Agency to hold a public hearing before changing the rates for electric service. A public hearing is not required if the Local Government Commission has assumed financial control of the city, a catastrophic event has occurred, or immediate action is needed to avoid impairing the ability of the municipality to comply with debt or bond obligations. The act also requires the North Carolina Eastern Municipal Power Agency to hold a public meeting before changing its rates for energy sold to the members of that Power Agency. A public meeting is not required if a catastrophic event has occurred, or immediate action is needed to avoid impairing the ability of the municipality to comply with debt or bond obligations.

This act becomes effective October 1, 2012. (HF)

#### **North Carolina Eastern Municipal Power Agency/Use of Rate Revenue**

S.L. 2012-181 ([HB 1114](#)) requires the cities and towns that are members of the North Carolina Eastern Municipal Power Agency to use revenues from electric systems owned by the cities and towns only for the following:

- Direct and indirect costs of the systems.
- Transfers to other funds of the municipality that represent a rate of return on the investment in the system.

- Debt service payments on the system.  
This act becomes effective July 1, 2014. (HF)

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