2003-2004

SENATE
JUDICIARY I

COMMITTEE
MINUTES

2003-2004

Judiciary-1 Subcommittee

Sen. Wib Gulley – Chair

Sen. R.C. Soles
Sen. Linda Garrou
Sen. Steve Metcalf
Sen. Ham Horton
Sen. Bob Carpenter
Sen. Phil Berger

2003-2004
Judiciary 1 Committee

Sen. Dan Clodfelter – Chair

Sen. Phil Berger – V Chair
Sen. R.C. Soles – V.Chair
Sen. Patrick Ballantine – V.Chair

Sen. Albertson
Sen. Bob Carpenter
Sen. Linda Garrou
Sen. Wib Gulley
Sen. Cecil Hargett
Sen. Ham Horton
Sen. David Hoyle
Sen. Clark Jenkins
Sen. Jeanne Lucas
Sen. Vernon Malone
Sen. Steve Metcalf
Sen. Tony Rand

Staff Attorneys

Walker Reagan
Bill Gilkeson
Hal Pell

Committee Assistant

Wanda Joyner

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	February 13, 2003	15 Min after Session	1027 LB

The following will be considered:

- SB-3 Session Limits — Sen. Hoyle

Senator Dan Clodfelter, Chair

Judiciary 1 Committee

Minutes

2-13-03

Senator Dan Clodfelter, Chair at 10:34 a.m. called the meeting to order with thirteen members present. He introduced new members of the Committee, Senator Cecil Hargett, Senator Clark Jenkins, Senator Vernon Malone and Senator Linda Garrou.

SB 3 (Session Limits) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor Senator David Hoyle spoke on the bill and explained changes. See Bill Summary for further explanation.

Senator Ham Horton moved to adopt the Committee Substitute. All members voted yes. Committee Substitute was adopted. Mr. Franklin Freeman from Governor Easley's office spoke on the bill on behalf of the Governor, who favored the bill. Senator R. C. Soles and Senator Charlie Albertson had questions about the bill. Staff attorney, Walker Reagan and Senator Clodfelter, answered the questions. Ms. Leslie Bevaqua, lobbyist for NC Citizens for Business and Industry spoke on the bill. Senator Bob Carpenter moved for a Favorable Report. Senator Tony Rand seconded the motion. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:45 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, February 18, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. 3 Session Limits.

Draft Number:	PCS75033
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Report added by dotw

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 3
PROPOSED COMMITTEE SUBSTITUTE S3-PCS75033-RU-1

Short Title: Session Limits. (Public)

Sponsors:

Referred to:

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR ORGANIZATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11(1) of Article II of the North Carolina Constitution reads as rewritten:

"(1) Regular sessions.

(a) The General Assembly shall meet in regular session ~~in 1973~~ after the term of office for Senators and Representatives commences in 2004 and every two years thereafter on the day prescribed by law.

(b) Odd-numbered years. – Beginning with the regular session in 2005, during an odd-numbered year, the General Assembly shall remain in session for no more than 135 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 calendar days. The month of December beginning on the first Wednesday in the month in each preceding even-numbered year is also included in the calculation of the limit of days the General Assembly may meet in odd-numbered years. If the General Assembly, upon convening of the regular session, meets initially for not more than two consecutive calendar days and then adjourns for not less than 30 calendar days, that period of adjournment shall be excluded from the 135 calendar days.

(c) Even-numbered years. – If the regular session meets in even-numbered years, the General Assembly shall remain in session for no more than 60 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 calendar days, but the month of December beginning on the first Wednesday in the

month of each even-numbered year is excluded from the calculation of the maximum number of days the General Assembly can meet in that year.

(d) Any reconvened session called under Section 5 of Article III of this Constitution shall be excluded from the calculations of this section.

(e) Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(f) No valid action, other than a resolution of adjournment, may be taken by the General Assembly after the time limits prescribed in this section have expired."

SECTION 2. Section 9 of Article II of the North Carolina Constitution reads as rewritten:

"**Sec. 9. Term of office.**

The term of office of Senators and Representatives shall commence on the first ~~day of January~~ Wednesday in December next after their election."

SECTION 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the next statewide election, primary or otherwise, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"**[ ] FOR [ ] AGAINST**

Constitutional amendments limiting the length of the legislative session and making conforming amendments concerning the date of the beginning of the term."

SECTION 4. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State whereupon the amendments shall become effective. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 3:
Session Limits.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	February 13, 2003	**Summary by:**	O. Walker Reagan
Version:	Proposed Committee Substitute S3-CSRU-1		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 3 would authorize a referendum on the question of limiting legislative sessions beginning in 2005 to 135-calendar days in odd-numbered years and 60-calendar days in even-numbered years, with a maximum of one 10-day extension each year.***

CURRENT LAW: There is no constitutional limit on the length of legislative sessions.

BILL ANALYSIS: If approved by the voters, Section 1 would amend the NC Constitution to establish a limit on the length of regular legislative sessions. Long regular sessions in odd-numbered years would be limited to 135 calendar days. This session could be extended for up to an additional 10 calendar days one time based on the adoption of a joint resolution by both the House and Senate. Short regular sessions in even-numbered years would be limited to 60 calendar days also with one possible 10-day extension. Also under this amendment, the General Assembly could convene initially for not more than two consecutive days and adjourn for at least 30 calendar days without the two-day session counting toward the 135-day limit. Nothing in this amendment prevents the General Assembly from being called into special session either by petition of 3/5ths of both the House and Senate, or upon the call of the Governor.

If approved by the voters, Section 2 would change the beginning of the legislative term of office from January 1st following election to the first Wednesday in December following election.

Sections 3 and 4 set out the proposed constitutional amendments on the ballot at the next statewide election, primary or otherwise. If the voters approve the constitutional amendments, legislative sessions beginning in 2005 would be subject to limits.

The bill becomes effective when it become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 3

Short Title:	Session Limits.	(Public)
Sponsors:	Senators Hoyle; Albertson, Allran, Apodaca, Ballantine, Berger, Clodfelter, Dalton, Dannelly, Dorsett, Forrester, Garrou, Garwood, Gulley, Hagan, Hargett, Hartsell, Horton, Jenkins, Kerr, Kinnaird, Lucas, Malone, Metcalf, Moore, Pittenger, Purcell, Rand, Reeves, Rucho, Sloan, Smith, Stevens, Swindell, Thomas, and Weinstein.	
Referred to:	Judiciary I.	

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS, AND TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR ORGANIZATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11(1) of Article II of the North Carolina Constitution reads as rewritten:

"(1) Regular sessions. The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Beginning with the regular session in 2005, during an odd-numbered year the General Assembly shall remain in regular session for no more than 135 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days. The month of December in each even-numbered year is also included in the calculation. If the General Assembly upon convening of the regular session meets for not more than two consecutive calendar days and then adjourns for not less than 30 days, that period of adjournment shall be excluded from the 135 days. If the regular session meets in even-numbered years, the General Assembly shall remain in regular session for no more than 60 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days, but the month of December in each even-numbered year is excluded from the calculation. Any reconvened session called under Section 5 of Article III of this Constitution shall be excluded from the calculations of this section. Neither house shall proceed upon public business unless a majority of all of its members are actually present. No valid action, other than a resolution of

adjournment, may be taken by that regular session of the General Assembly after the time limits prescribed in this section have expired."

SECTION 2. Section 9 of Article II of the North Carolina Constitution reads as rewritten:

"**Sec. 9. Term of office.**

The term of office of Senators and Representatives shall commence on the first ~~day of January~~ Wednesday in December next after their election."

SECTION 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the next statewide election, primary or otherwise, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"**[ ] FOR [ ] AGAINST**

Constitutional amendment limiting the length of the legislative session and making conforming amendments concerning the beginning of the term."

SECTION 4. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State whereupon the amendments shall become effective. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

SECTION 5. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~third Wednesday after the second Monday in January~~ first Wednesday in December next after their election."

SECTION 6. Section 5 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 and 2 of this act. If the constitutional amendments proposed in Sections 1 and 2 of this act are approved by the voters, Section 5 of this act shall become effective at the same time as the constitutional amendments.

SECTION 7. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — 2-13-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Linda Dupp	SBE
Andre Bedeque	NCCBE
John McHugh	GOD DEVICE
J Stevens	NCCASA, ACMH
Anne Wine	NCAWA
Michelle Frazier	NC Bar Ass'n
R. Paul Wilms	NCHBA
Steve Woodson	NC Farm Bureau
Mark Gunn	Capitol Group
Mac L. [illegible]	NCAE
Michael Hamser	NCAE

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

2-13-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	NCLM
Hal Miller	NCACCT
[signature]	NCRA
Judy Thiscoe	NCGA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

2ND CORRECTED NOTICE
TIME CHANGE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
THURSDAY	February 20, 2003	9:00 am	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB 29	Extend Date Retailers Exempt.Plum/Heat Laws	Sen. Allran

SenatorDan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

February 20, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 9:05 a.m. with seven members present. He introduced Pages, Ashley Keel form Bethel, NC And Brittany Smith from Raleigh, NC.

SB-29 (Extend Date Retailers Exempt. Plumb/Heat Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Austin Allran was present, but Senator Clodfelter presented the bill and explained the bill would extent the effective date of the exemption provided to retailers from plumbing and heating licensing requirements in certain circumstances from March 1, 2003 to May 1, 2003. See attached Bill Summary for further information. There was no questions or discussion. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 9:05 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, February 20, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **29** Extend Date Retailers Exempt. Plum/Heat Laws.

Draft Number:	PCS15051
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S **D**

SENATE BILL 29
PROPOSED COMMITTEE SUBSTITUTE S29-PCS15051-SU-1

Short Title: Extend Date Retailers Exempt. Plum/Heat Laws. (Public)

Sponsors:

Referred to:

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE EFFECTIVE DATE OF THE EXEMPTION GIVEN TO RETAILERS UNDER THE LAWS REGULATING PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 36(b) of S.L. 2002-159 reads as rewritten:

"**SECTION 36.(b)** This section becomes effective ~~March 1, 2003.~~May 1, 2003."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 29:
Extend Date Retailers Exempt. Plum/Heat Laws

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Allran
Date:	February 20, 2003	**Summary by:**	Wendy Graf Ray
Version:	Proposed Committee Substitute S29-CSSU-1[v.4]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 29 would extend the effective date of the exemption provided to retailers from plumbing and heating licensing requirements in certain circumstances from March 1, 2003 to May 1, 2003.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 29 would amend the effective date of a provision passed in the 2002 Technical Corrections Bill. The provision created an exemption for retailers from the plumbing and heating licensing requirements when the retailer enters into a transaction with a buyer to sell a good and the associated installation services, as long as the retailer arranges for an individual who is appropriately licensed to perform the actual installation. The provision becomes effective March 1, 2003. The Proposed Committee Substitute would extend the effective date to May 1, 2003.

EFFECTIVE DATE: The act would be effective when it becomes law.

(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this ~~Article;~~Article.

(4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of ~~copying;~~copying.

(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, ~~Division~~ Office of Archives and History, and shall be preserved for a period of 10 years.

(6) To prepare and publish such reports as it may deem ~~appropriate;~~appropriate.

(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article, and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this ~~Article; and~~ Article.

(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

(9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.

(10) To instruct the chairman and director of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

(11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.

(12) To assist county boards of elections in resolving questions arising from the administration of this Article.

(13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article.

(14) To calculate, assess, and collect civil penalties pursuant to this Article."

SECTION 36.(a) G.S. 87-21 is amended by adding a new subsection to read:

"(i) The provisions of this Article shall not apply to a retailer, as defined in G.S. 105-164.3(35), who, in the ordinary course of business, enters into a transaction with a buyer in which the retailer of a good and the services necessary for the installation of the good, contracts with a licensee under this Article to provide the installation services if the contract, containing the licensee's license number, is signed by the buyer, the retailer, and the licensee. All services rendered pursuant to this section by the licensee must be performed in compliance with all local permit and inspection requirements."

SECTION 36.(b) This section becomes effective March 1, 2003.

SECTION 37. G.S. 90-85.3(b1) and (r) read as rewritten:

"**§ 90-85.3. Definitions.**

...

(b1) "Clinical pharmacist practitioner" means a licensed pharmacist who meets the guidelines and criteria for such title established by the joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and is authorized to enter into drug therapy management agreements with physicians in accordance with the provisions of ~~G.S. 90-18.3.~~G.S. 90-18.4.

...

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 29

Short Title:	Extend Date Retailers Exempt. Plum/Heat Laws.	(Public)
Sponsors:	Senators Allran; Apodaca, Berger, Clodfelter, Shubert, Sloan, and Smith.	
Referred to:	Rules and Operations of the Senate.	

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE EFFECTIVE DATE OF THE EXEMPTION GIVEN TO RETAILERS UNDER THE LAWS REGULATING PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 36(b) of S.L. 2002-159 reads as rewritten:

"**SECTION 36.(b)** This section becomes effective ~~March 1, 2003.~~October 1, 2003."

SECTION 2. This act is effective when it becomes law.

(SB-29)

VISITOR REGISTRATION SHEET

J.I Committee — Name of Committee

2-20-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCRA
	NCRMA
FRAN PRESTON	NCRMA
Rep. MARK CREECH	CAL
Mark Fountain	Young Moore & Henderson
John McHugh	Gov Office
	Ben Hackaday, NCAPHCC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
TUESDAY	MARCH 18, 2003	10:00 AM	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB 136	Dissenters' Rights Clarifications	Sen. Dan Clodfelter
•	SB 274	Session Limits Conforming Change	Sen. David Hoyle
•	SB 394	Equ. Dis. Claim Survive Death Spouse/Limit.	Sen. Rand/Clodfelter

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

MARCH 18, 2003

MINUTES

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 am with nine members present. He introduced Pages Anna Scott from Lake Waccamaw, NC and David Saxton from Apex, NC

SB-274 (Session Limits Conforming Changes) was introduced by Senator Clodfelter. In the absence of the bill sponsor, Senator David Hoyle, Staff attorney, Walker Reagan explained the bill and stated that this bill is a conforming bill to SB-3 (Session Limits) adopted 2-18-03, and he then explained the changes. See attached Bill Summary for further explanation. Senator Clodfelter asked for any questions or discussion. Being none, Senator Steve Metcalf moved for a Favorable Report. All members voted yes. Motion carried.

SB-394 (Equ.Dis.Claim Survive Death Spouse/Limit) Proposed Committee Substitute was introduced by Senator Clodfelter. Being the bill sponsor, he stated that there would be a Proposed Committee Substitute for the bill, but it was not ready yet. The bill would be discussed, but not voted on at this time. Staff attorney, Walker Reagan explained the bill. See attached Bill Summary for further explanation. Senator Clodfelter asked for discussion. Senator's Charlie Albertson, Phillip Berger and Bob Carpenter had questions. Staff attorney, Walker Reagan and Mr. Wade Harrison from the Family Law Section of the NC Bar Association answered the questions. The bill would be displaced to be heard again at a future date.

SB-136 (Dissenters' Rights Clarifications) was introduced by Senator Phillip Berger, Vice Chair, Bill sponsor, Senator Dan Clodfelter explained the bill and asked for questions or discussion. Senator Tony Rand had a question. Mr. Mark Davidson from the Business Law Section of the NC Bar Association spoke on the bill and answered questions. Senator Clodfelter stated that the bill would not be voted on at this time, but would be heard at a future date.

Being no further business the meeting adjourned at 10:47 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, March 18, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **274** Session Limits Conforming Change.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 274

Short Title:	Session Limits Conforming Change.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Judiciary I.	

March 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE A CONFORMING STATUTORY CHANGE CONCERNING THE ORGANIZATIONAL SESSION IF THE SESSION LIMITS CONSTITUTIONAL AMENDMENT IS APPROVED BY THE VOTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~third Wednesday after the second Monday in January~~ first Wednesday in December next after their election."

SECTION 2. Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 and 2 of Senate Bill 3, 2003 Session, AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSION, AND TO PROVIDE FOR AN EARLIER CONVENING TIME FOR ORGANIZATION. If the constitutional amendments proposed in Sections 1 and 2 of that act are approved by the voters, Section 1 of this act shall become effective at the same time as the constitutional amendments.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 274:
Session Limits Conforming Change.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Hoyle
Date:	March 18, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 274 makes a conforming statutory change to the date of the convening of the regular session of the General Assembly to correspond to the term of office contained in Senate Bill 3, AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSION, AND TO PROVIDE FOR AN EARLIER CONVENING TIME FOR ORGANIZATION. The bill moves the convening of the General Assembly to the first Wednesday in December next after their election.***

CURRENT LAW: Section 11 of Article II of the North Carolina Constitution gives the power to set the convening of the General Assembly in regular session to the General Assembly. Currently G.S. 120-11.1 sets the time of the convening of a regular session of the General Assembly as the third Wednesday after the second Monday in January next after the members' election.

BILL ANALYSIS: The bill, which becomes effective only if the constitutional amendment proposed in Senate Bill 3 is approved by the votes in referendum, would conforming the statute setting the date for the convening of the regular session of the General Assembly to the first date of the term of office of members of the General Assembly, namely the first Wednesday in December after the members' election.

S274-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 394
PROPOSED COMMITTEE SUBSTITUTE S394-CSRU-2 [v.1]

3/17/2003 6:34:55 PM

Short Title: Equ. Dis. Claim Survive Death Spouse/Limit. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) ~~A pending action for equitable distribution shall not abate upon the death of a party.~~A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death. Any claim for equitable distribution made after the death of a party must be filed with the estate of the deceased spouse in accordance with Article 19 of Chapter 28A of the General Statutes, or if no estate administration is opened, an action for equitable distribution must be filed within six months of the date of death."

SECTION 2. The catch line for G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital and divisible ~~property upon divorce.~~property.**"

SECTION 3. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

SENATE BILL 394: Equitable Distribution Claim Survive Death Spouse/Limit.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Rand
Date:	March 18, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S394-CSRU-2		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 394 would amend the equitable distribution law to allow a claim to be filed after the death of one of the spouses where the parties had lived separate and apart prior to death, even if an action for equitable distribution had not been filed prior to death.***

CURRENT LAW: Currently G.S. 50-20(l) allows a claim for equitable distribution that is pending at the time of the death of one spouse to continue not withstanding the death.

BILL ANALYSIS: The Proposed Committee Substitute would extend the current law to also allow an action for equitable distribution to be filed after the death of a spouse where the parties were legally separated at the time of death. The bill requires that a claim for equitable distribution made after death be subject to the same filing and notice requirements with the personal representative of the deceased spouse's estate as required by all other creditors of the estate. If an estate is not opened, an action must be brought within 6 months of death.

Under Article 19 of Chapter 28A of the General Statutes, a creditor has to file a notice of claim with the personal representative within 90 days of the notice to creditors is delivered or published. If the personal representative rejects the claim, the surviving spouse has to bring an action against the estate within three months after the date of the notice of the rejectment.

EFFECTIVE DATE: The bill is effective when it becomes law, and applies to actions pending or filed on or after that date.

§ 28A-19-1. Manner of presentation of claims.

(a) A claim against a decedent's estate must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the claimant; and must be presented by one of the following methods:

(1) By delivery in person or by mail to the personal representative, collector or clerk of superior court. Such claim will be deemed to have been presented from the time of such delivery.

(2) By mailing, registered or certified mail, return receipt requested, to the personal representative or collector at the address set out in the general notice to creditors. Such claim will be deemed to have been presented from the time when the return receipt is signed by the personal representative, collector, or his agent, or is refused by the personal representative, collector, or his agent.

(3) By delivery to the clerk of court of the county in which the estate is pending, which notice shall be filed in the appropriate estate file and copy mailed first class by the clerk of superior court at the expense of the claimant to the personal representative, collector, or his agent. The claim will be deemed to have been presented from the time of delivery to the clerk of court.

(b) In an action commenced after the death of the decedent against his personal representative or collector as such, the commencement of the action in the court in which such personal representative or collector qualified will constitute the presentation of a claim and no further presentation is necessary. In an action filed in any other court such claim will be deemed to have been presented at the time of the completion of service of process on such personal representative or collector.

(c) In an action pending against the decedent at the time of his death, which action survives at law, the substitution of the personal representative or collector for the decedent or motion therefor will constitute the presentation of a claim and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor. (1973, c. 1329, s. 3; 1977, c. 446, s. 1; 1985, c. 645, s. 1.)

§ 28A-19-3. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, except contingent claims based on any warranty made in connection with the conveyance of real estate and claims of the United States and tax claims of the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not presented to the personal representative or collector pursuant to G.S. 28A-19-1 by the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a) or in those cases requiring the delivery or mailing of notice as provided for in G.S. 28A-14-1(b), within 90 days after the date of the delivery or mailing of the notice if the expiration of said 90-day period is later than the date specified in the general notice to creditors, are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent. Provided further, if the expiration of said 90-day period is later than the date specified in the general notice to creditors, the notice delivered or mailed to each creditor, if any, shall be accompanied by a statement which specifies the deadline for filing the claim of the affected creditor.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, except claims of the United States and tax claims of the State of North Carolina and subdivisions thereof whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector as follows:

(1) With respect to any claim based on a contract with the personal representative or collector, within six months after the date on which performance by the personal representative or collector is due;

(2) With respect to any claim other than a claim based on a contract with the personal representative or collector, within six months after the date on which the claim arises.

(c) Except as otherwise provided by subsection (f) of this section, no claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim is presented within the period provided by subsection (a) hereof.

(d) All claims of creditors upon whom there has been personal service of notice as provided in G.S. 28A-14-3 are forever barred unless presented to the personal representative or collector within the time and manner set out in this Article.

(e) Except as otherwise provided by subsection (f) of this section, unless a claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding pending against a decedent at the time of his death and surviving under G.S. 28A-18-1 within the time provided by subsection (a) of this section, no recovery may be had upon any judgment obtained in any such action or proceeding against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent.

(f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in any event, be barred if the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within three years after the death of the decedent.

(g) Nothing in this section affects or prevents any action or proceeding to enforce any mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon any property of the decedent's estate, but no deficiency judgment will be allowed if the provisions of this section are not complied with.

(h) The word "claim" as used in this section does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees.

(i) Nothing in this section shall bar:

(1) Any claim alleging the liability of the decedent or personal representative; or

(2) Any proceeding or action to establish the liability of the decedent or personal representative; or

(3) The recovery on any judgment against the decedent or personal representative

to the extent that the decedent or personal representative is protected by insurance coverage with respect to such claim, proceeding or judgment or where there is underinsured or uninsured motorist coverage that might extend to such claim, proceeding, or judgment. (1973, c. 1329, s. 3; 1977, c. 446, s. 1; 1979, c. 509, s. 1; 1989, c. 378, s. 3, c. 485, s. 65.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 136

Short Title:	Dissenters' Rights Clarifications.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 24, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING DISSENTERS' RIGHTS WITH REGARD TO MAJORITY CONSENT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-13-02(a) reads as rewritten:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters,

or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes; (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit corporation or cooperative organization; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

For purposes of subdivision (4) of this subsection, an amendment of the articles of incorporation to allow action to be taken on a matter without a meeting by less than all shareholders entitled to vote on the matter pursuant to G.S. 55-7-04(a), or to provide that advance notice of an action to be taken without meeting by shareholders is not required pursuant to G.S. 55-7-04(d), or both, shall not constitute an amendment that excludes or limits the right of shares to vote on any matter or to cumulate votes."

SECTION 2. This act becomes effective October 1, 2003.

SENATE BILL 136:
Dissenters' Rights Clarifications.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	March 18, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 136 would clarify that amendments to articles of incorporation that allow actions to be taken without a meeting of all shareholders, or without notice to all shareholders under certain circumstances, do not constitute amendments to exclude or limit the rights of shares to vote on any manner, or to cumulate votes, which otherwise give rights to dissenters' rights.***

CURRENT LAW: G.S. 55-13-02(a)(4)(iv) gives dissenters' rights to corporate shareholders when the corporation adopts an amendment to its articles of incorporation that excludes or limits the right of the shares to vote on any matter, or to cumulate votes.

BILL ANALYSIS: Senate Bill 136 would clarify that certain amendments to articles of incorporation involving corporation actions to be taken without a meeting of all shareholders would not constitute amendments which give rise to dissenters' rights. G.S. 55-7-04(a) allows a corporation to take action without a meeting of all shareholders upon consent to the action without a meeting by a defined number of shareholders. G.S. 55-7-04(d), unless the articles of incorporation provide otherwise, requires notice of the action be given to shareholders who do not consent to action without a meeting. (See portions of relevant statutes attached.)

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

S136-SMRU-001

§ 55-7-04. Action without meeting.

(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the action or, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more written consents bearing the date of signature and signed by the number of shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent to action taken without meeting may be in electronic form and delivered by electronic means.

.....

(d) Unless the articles of incorporation otherwise provide, if shareholder approval is required by this Chapter for (i) an amendment to the articles of incorporation pursuant to Article 10 of this Chapter, (ii) a plan of merger or share exchange pursuant to Article 11 of this Chapter, (iii) a plan of conversion pursuant to Part 2 of Article 11A of this Chapter, (iv) the sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's property pursuant to Article 12 of this Chapter, or (v) a proposal for dissolution pursuant to Article 14 of this Chapter, and the approval is to be obtained through action without meeting, the corporation must give its shareholders, other than shareholders who consent to the action, written notice of the proposed action at least 10 days before the action is taken. The notice shall contain or be accompanied by the same material that, under this Chapter, would have been required to be sent to shareholders not entitled to vote on the action in a notice of meeting at which the proposed action would have been submitted to shareholders for action.

MEETING VOTE
VS.
ACTION WITHOUT MEETING

•Example: corporation with 100 common shares outstanding ... as follows:

A-40 shares

B-33 shares

C-27 shares

•Meeting vote: "majority of a majority"

•Only B and C attend meeting; quorum is present (more than 50 shares)

•B votes yes, C votes no

•Matter passes, even though only one-third of shares actually voted for it

•Action without meeting: requires absolute majority

•B's consent is not enough

•If A and C don't consent, effect is to treat them as voting against matter

Law Review and Journal Commentaries

Silencing the Shareholders' Voice. Thomas Lee Hazen, 80 N.C.L.Rev. 1897, (2002).

§ 55–7–04. Action without meeting

(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the action or, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more written consents bearing the date of signature and signed by the number of shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G. S. 55–1–50, a shareholder's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(a1) Notwithstanding subsection (a) of this section, the following actions may be taken without a meeting only by all the shareholders entitled to vote on the action:

(1) If cumulative voting is not authorized, the election of directors at the annual meeting; or

(2) If cumulative voting is authorized, the election of directors and the removal of a director unless the entire board of directors is to be removed, and if G.S. 55–7–28(e) applies to the corporation, an amendment to the articles of incorporation to deny or limit the right of shareholders to vote cumulatively and an amendment to the articles of incorporation or bylaws to decrease the number of directors.

(b) A shareholder's written consent to action to be taken without a meeting shall cease to be effective on the sixty-first day after the date of signature appearing on the consent unless prior to the sixty-first day the corporation has received written consents sufficient under subsection (a) of this section to take the action without meeting. If not otherwise fixed under G.S. 55–7–03 or G.S. 55–7–07, the record date for determining shareholders entitled to take action without a meeting is the earliest date of signature appearing on any consent that is to be counted in satisfying the requirements of subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) Unless the articles of incorporation otherwise provide, if shareholder approval is required by this Chapter for (i) an amendment to the articles of incorporation pursuant to Article 10 of this Chapter, (ii) a plan of merger or share exchange pursuant to Article 11 of this Chapter, (iii) a plan of conversion pursuant to Part 2 of Article 11A of this Chapter, (iv) the sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's property pursuant to Article 12 of this Chapter, or (v) a proposal for dissolution pursuant to Article 14 of this Chapter, and the approval is to be obtained through action without meeting, the corporation must give its shareholders, other than shareholders who consent to the action, written notice of the proposed action at least 10 days before the action is taken. The notice shall contain or be accompanied by the same material that, under this Chapter, would have been required to be sent to shareholders not entitled to vote on the action in a notice of meeting at which the proposed action would have been submitted to shareholders for action.

(e) If action is taken without a meeting by fewer than all shareholders entitled to vote on the action, the corporation shall give written notice to all shareholders who have not consented to the action and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting with the same record date as the action taken without a meeting, within 10 days after the action is taken. The notice shall describe the action and indicate that the action has been taken without a meeting of shareholders. Failure to comply

with the requirements of this subsection shall not invalidate any action taken that otherwise complies with this section.

Amended by S.L. 2001–387, § 11, eff. Jan. 1, 2002; S.L. 2001–487, §§ 62(b), 62(c), eff. Jan. 1, 2002.

Supplemental North Carolina Commentary (2001)

Effective January 1, 2002, this section was amended to permit less than unanimous shareholder action without meeting for corporations other than public corporations. Subsection (b) was amended to add a requirement that written consents to an action must be obtained from shareholders within a period of 60 days. Subsection (d) was amended to require advance notice of proposed shareholder action on certain fundamental corporate changes to all shareholders (other than shareholders who consent to the action) rather than only to holders of nonvoting shares. Advance notice is not required if the articles of incorporation so provide. Subsection (e) was added to provide that if action is taken by less than unanimous written consent, notice of the action must be given within 10 days after the action is taken to all shareholders who have not consented to the action and who would have been entitled to notice of the proposed action if the action had been taken at a meeting.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–387, § 11, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

"(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents signed by all the shareholders before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

"(b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

"(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

"(d) If this Chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this Chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action."

S.L. 2001–487, § 62(b), eff. Jan. 1, 2002, in subd. (2) of subsec. (a1), inserted "to the articles of incorporation".

S.L. 2001–487, § 62(c), eff. Jan. 1, 2002, rewrote subsec. (b), which prior thereto read:

"(b) If not otherwise fixed under G.S. 55–7–03 or G.S. 55–7–07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a). No written consent shall be effective to evidence the action referred to therein unless, within 60 days after the earliest date appearing on a written consent delivered to the corporation in the manner required by this section, the corporation receives written consents signed by shareholders sufficient to take the action without a meeting."

Cross References

Dissenters' notice, see § 55–13–22.

Law Review and Journal Commentaries

Silencing the Shareholders' Voice. Thomas Lee Hazen, 80 N.C.L.Rev. 1897, (2002).

§ 55–7–05. Notice of meeting

Cross References

Conversion plans, notification of shareholders, see § 55–11A–11.

§ 55–7–08. Attendance

To the extent authorized by a corporation's board of directors, a shareholder or the shareholder's proxy not physically present at a meeting of shareholders may attend the

SUMMARY OF 23 STATES THAT PERMIT SHAREHOLDER MAJORITY WRITTEN CONSENT

State	Excluded Actions	Opt-In		Opt-Out		Private	Action	Notice	
		Charter	Bylaws	Charter	Bylaws	Co. Onl	Within 60 Days	Before Action	After Action
AK	Increase capital stock or bond indebtedness							10 days notice to NVSH	
CA	Election of directors			X				10 days notice to all SH for certain actions	promptly to NCSH
CT	Election of directors unless a plan of merger is at issue	X					X	20-50 days notice to all VSH	
DE	Certain limitations on election of directors			X			X		promptly to NCSH
FL				X			X		w/in 10 days to NVSH, NCSH
GA	Election of directors if cumulative voting	X					X	Same as for meeting	w/in 10 days to all SH
IA	90% of SH must approve action			X			X	10 days notice to all SH if notice to NVSH required for meeting	promptly to NCSH
IL				X				5 days notice to all VSH	promptly to NCSH
KY	Election of directors. 80% of SH must approve action	X						10 days notice to all SH if notice to NVSH required for meeting	promptly to NCSH
LA		X							promptly to NCSH
MI		X					X		promptly to NCSH
NJ	Annual election of directors			X			X		10 days notice to NCSH (20 days for merger) before action is effective
NV	Election of directors			X	X				
NY		X					X		promptly to NCSH
OK				X			X		promptly to NCSH
PA			X						10 days notice to NCSH before action is effective
RI	Merger or consolidation, certain acquisitions, sale of assets not in regular course of business	X							promptly to all SH
TN	SH must unanimously approve taking each action by majority written consent							10 days notice to NVSH	
TX		X					X		promptly to NCSH
VA		X				X		5 days notice to all SH	
VT		X						notice to all SH	promptly to all SH
WA		X				X	X	notice to NVSH and NCSH; charter should specify notice to NCSH	
WI	Election of directors if cumulative voting	X						10 days notice to NVSH	w/in 10 days to NCSH

NCSH = Non-Consenting Shareholders
NVSH = Shareholders not eligible to vote

SH = Shareholders
VSH = Shareholders eligible to vote

VISITOR REGISTRATION SHEET

J-1 Committee — 3-18-03

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
P Bowell	AOC
Christopher Capel	Smith Anderson (Bar Assoc.)
Mark Davidson	Brooks Pierce
Michelle Frazier	NC Bar Ass'n
Wade Harrison	Family Law Section - NC Bar Ass'n
John Goodman	Mercer Assoc.
John Rustin	NCFPC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
THURSDAY	March 20, 2003	10:00 am	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	HB-382	Marriage by District Court Judge	Rep. Tolson
•			

A PRESENTATION BY NORTH CAROLINA SENTENCING & POLICY ADVISORY COMMISSION ON STRUCTURED SENTENCING.

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

March 20, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:03 am with twelve members present. He introduced Page, Marie Huggins from Raleigh.

HB 382 (Marriage by District Court Judge) was introduced by Senator Clodfelter. Bill sponsor, Representative Joe Tolson explained the bill. Senator Clodfelter asked for questions or discussion No discussion followed. Senator Linda Garrou moved for a Favorable Report. Motion was seconded by Senator Bob Carpenter. All members voted yes. Motion carried.

A presentation by the North Carolina Sentencing & Policy Advisory Commission on Structured Sentencing was given to all present. Senator Clodfelter introduced Ms. Susan Katzenelson, Executive Director of the Commission who spoke briefly on the sentencing issue. She then asked Mr. John Madler, Associate Director to speak in detail on the sentencing issue, showing slides and handing out statistics information to all members. See attached handouts for further information. Mr. Madler asked for questions. Senator's Jeanne Lucas, R.C. Soles, Tony Rand, Wib Gulley, and Vernon Malone had questions. Mr. Madler answered their questions and stated that going on their web site may have further information. (wwwnccourts.org/courts/crs/councils/spac).

There being no further business the meeting adjourned at10: 55 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, March 20, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **382** Marriage by District Court Judge.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 382

Short Title:	Marriage by District Court Judge.	(Public)
Sponsors:	Representative Tolson.	
Referred to:	Judiciary III.	

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT COURT JUDGES TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, either:

(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, a district court judge of this State, or a magistrate; and

b. With the consequent declaration by the ~~minister~~ minister, judge, or magistrate that the persons are husband and wife; or

(2) In accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.

Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. This act is effective when it becomes law and expires March 31, 2003.

HOUSE BILL 382:
Marriage by District Court Judge

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Tolson
Date:	March 20, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 382 would allow a district court judge to perform marriages in North Carolina until March 31, 2003.***

CURRENT LAW: Under the current law, a valid marriage in North Carolina may be performed by an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate.

BILL ANALYSIS: House Bill 382 would add district court judges to the list of individuals authorized to perform marriages in North Carolina for a limited period of time.

PRIOR HISTORY: Previously similar authority has been given for limited periods of time to district court judges in 2001 and 2002 and to superior court judges in 2000, 2001, and 2002.

EFFECTIVE DATE: The act would be effective when it becomes law and would expire March 31, 2003.

This summary was substantially contributed to by Wendy Graf Ray

DISPOSITIONS

ACTIVE PUNISHMENT

- Active sentence to the state prison system

INTERMEDIATE PUNISHMENT

- A suspended prison sentence, supervised probation with at least one of the following conditions:

1. Special Probation
2. Residential Program
3. House Arrest with Electronic Monitoring
4. Intensive Probation
5. Day Reporting Center

COMMUNITY PUNISHMENT

- A fine and/or a suspended prison sentence with supervised or unsupervised probation. May include:

1. Out-Patient Treatment
2. Community Service
3. Restitution
4. Any authorized conditions not defined as Intermediate Punishments

PRIOR RECORD
(For offenses committed on or after December 1, 1997)

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		POINTS
	Prior Felony Class A Conviction	x 10	
	Prior Felony Class B1 Conviction	x 9	
	Prior Felony Class B2 or C or D Conviction	x 6	
	Prior Felony Class E or F or G Conviction	x 4	
	Prior Felony Class H or I Conviction	x 2	
	Prior Misdemeanor Class A1 or 1 Conviction*, Prior Impaired Driving Conviction, or Prior Impaired Driving in a Commercial Vehicle Conviction	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in any prior offense, whether or not the prior offense was used in determining prior record level		+ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape		+ 1	
		TOTAL	

** Class 1 misdemeanor offenses under Chapter 20 are not assigned any points except for misdemeanor death by vehicle [G.S. 20-141.4(a)(2)]*

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL _____

STEPS REQUIRED TO DETERMINE THE SENTENCE FOR FELONIES

1. DETERMINE THE OFFENSE CLASS FOR EACH FELONY CONVICTION

↓

2. DETERMINE THE PRIOR RECORD LEVEL FOR THE OFFENDER

↓

3. CONSIDER AGGRAVATING AND MITIGATING FACTORS

↓

4. SELECT A MINIMUM SENTENCE FROM THE APPROPRIATE SENTENCE RANGE

↓

5. DETERMINE THE MAXIMUM SENTENCE

↓

6. DETERMINE THE SENTENCE DISPOSITION:

↓	↓	↓
6A. **IMPOSE AN ACTIVE PUNISHMENT** ↓	*6B.* **IMPOSE AN INTERMEDIATE PUNISHMENT** ↓	*6C.* **IMPOSE A COMMUNITY PUNISHMENT** ↓
a. Activate the minimum and maximum sentence	*a. Suspend the minimum and maximum sentence* *b. Impose supervised probation* *c. Impose one or more intermediate punishments* *d. Impose any additional community punishments*	*a. Suspend the minimum and maximum sentence* *b. Impose probation and/or any other appropriate community punishment*

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A *240-300* **192-240** *144-192*	A *288-360* **230-288** *173-230*	A *336-420* **269-336** *202-269*	A *384-480* **307-384** *230-307*	A *Life Without Parole* **346-433** *260-346*	A *Life Without Parole* **384-480** *288-384*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *189 - 237* **151 - 189** *114 - 151*	A *220 - 276* **176 - 220** *132 - 176*	A *251 - 313* **201 - 251** *151 - 201*	A *282 - 353* **225 - 282** *169 - 225*	A *313 - 392* **251 - 313** *188 - 251*
C	A *73 - 92* **58 - 73** *44 - 58*	A *100 - 125* **80 - 100** *60 - 80*	A *116 - 145* **93 - 116** *70 - 93*	A *133 - 167* **107-133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101-135*
D	A *64 - 80* **51 - 64** *38 - 51*	A *77 - 95* **61 - 77** *46 - 61*	A *103 - 129* **82 - 103** *61 - 82*	A *117 - 146* **94 - 117** *71 - 94*	A *133 - 167* **107 - 133** *80 - 107*	A *146 - 183* **117 - 146** *88 - 117*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *34 - 42* **27 - 34** *20 - 27*	A *46 - 58* **37 - 46** *28 - 37*	A *53 - 66* **42 - 53** *32 - 42*	A *59 - 74* **47 - 59** *35 - 47*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *15 - 19* **12 - 15** *9 - 12*	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *20 - 25* **16 - 20** *12 - 16*	A *21 - 26* **17 - 21** *13 - 17*	A *29 - 36* **23 -29** *17 - 23*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 -10** *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
*Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95

FIGURE B: MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

Convictions and Sentences by Offense Class and Prior Record Level
FY 2001/02 Felonies

Offense Class	Prior Record Level						Total
	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	A A = 53 (100%) (n=53) Life/Death	A A = 21 (100%) (n=21) Life/Death	A A = 15 (100%) (n=15) Life/Death	A A = 9 (100%) (n=9) Life/Death	A A = 3 (100%) (n=3) Life/Death	A A = 3 (100%) (n=3) Life/Death	A A = 104 (100%) (n=104) Life/Death
B1	A A = 36 (100%) (n=36) 208 min 262 max	A A = 29 (100%) (n=29) 243 min 300 max	A A = 25 (100%) (n=25) 294 min 363 max	A A = 11 (100%) (n=11) 331 min 405 max	A A = 3 (100%) (n=3) 347 min 425 max	A A = 3 (100%) (n=3) 384 min 470 max	A A = 107 (100%) (n=107) 258 min 320 max
B2	A A = 90 (100%) (n=90) 138 min 174 max	A A = 78 (100%) (n=78) 175 min 220 max	A A = 47 (100%) (n=47) 198 min 247 max	A A = 32 (100%) (n=32) 241 min 298 max	A A = 7 (100%) (n=7) 215 min 267 max	A A = 5 (100%) (n=5) 281 min 345 max	A A = 259 (100%) (n=259) 177 min 222 max
C	A A = 118 (100%) (n=118) 63 min 85 max	A A = 165 (100%) (n=165) 78 min 103 max	A A = 197 (100%) (n=197) 89 min 116 max	A A = 257 (100%) (n=257) 99 min 128 max	A A = 87 (100%) (n=87) 113 min 145 max	A A = 82 (100%) (n=82) 124 min 158 max	A A = 906 (100%) (n=906) 92 min 120 max
D	A A = 294 (100%) (n=294) 50 min 69 max	A A = 233 (100%) (n=233) 61 min 83 max	A A = 184 (100%) (n=184) 84 min 111 max	A A = 98 (100%) (n=98) 95 min 124 max	A A = 27 (100%) (n=27) 113 min 145 max	A A = 20 (100%) (n=20) 130 min 165 max	A A = 856 (100%) (n=856) 69 min 93 max
E	I/A I = 248 (70%) A = 105 (30%) (n=353) 22 min 35 max	I/A I = 266 (66%) A = 135 (34%) (n=401) 26 min 40 max	A A = 139 (100%) (n=139) 30 min 46 max	A A = 107 (100%) (n=107) 40 min 58 max	A A = 16 (100%) (n=16) 49 min 68 max	A A = 24 (100%) (n=24) 58 min 78 max	I/A I = 514 (49%) A = 526 (51%) (n=1,040) 31 min 47 max

Convictions and Sentences by Offense Class and Prior Record Level (continued)
FY 2001/02 Felonies

Offense Class	Prior Record Level						Total
	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
F	I/A I = 423 (74%) A = 150 (26%) (n=573) 15 min 18 max	I/A I = 387 (62%) A = 239 (38%) (n=626) 16 min 19 max	I/A I = 205 (50%) A = 206 (50%) (n=411) 18 min 22 max	A A = 187 (100%) (n=187) 21 min 26 max	A A = 30 (100%) (n=30) 27 min 32 max	A A = 19 (100%) (n=19) 33 min 40 max	I/A I = 1,015 (55%) A = 831 (45%) (n=1,846) 18 min 22 max
G	I/A I = 499 (79%) A = 133 (21%) (n=632) 11 min 14 max	I/A I = 702 (71%) A = 282 (29%) (n=984) 13 min 16 max	I/A I = 372 (50%) A = 371 (50%) (n=743) 14 min 17 max	I/A I = 172 (37%) A = 290 (63%) (n=462) 18 min 22 max	A A = 86 (100%) (n=86) 19 min 23 max	A A = 52 (100%) (n=52) 26 min 32 max	I/A I = 1,745 (59%) A = 1,214 (41%) (n=2,959) 15 min 19 max
H	C/I/A C = 1,624 (60%) I = 829 (31%) A = 253 (9%) (n=2,706) 6 min 7 max	I/A I = 2,355 (75%) A = 770 (25%) (n=3,125) 7 min 9 max	I/A I = 1,291 (56%) A = 1,014 (44%) (n=2,305) 9 min 11 max	I/A I = 551 (36%) A = 979 (64%) (n=1,530) 10 min 12 max	I/A I = 119 (28%) A = 300 (72%) (n=419) 13 min 16 max	A A = 255 (100%) (n=255) 18 min 22 max	C/I/A C = 1,624 (16%) I = 5,145 (50%) A = 3,571 (34%) (n=10,340) 10 min 12 max
I	C C = 1,874 (100%) (n=1,874) N/A	C/I C = 2,059 (68%) I = 964 (32%) (n=3,023) N/A	I I = 1,079 (100%) (n=1,079) N/A	I/A I = 397 (49%) A = 405 (51%) (n=802) 7 min 9 max	I/A I = 76 (36%) A = 136 (64%) (n=212) 8 min 10 max	I/A I = 42 (26%) A = 120 (74%) (n=162) 9 min 11 max	C/I/A C = 3,933 (55%) I = 2,558 (36%) A = 661 (9%) (n=7,152) 8 min 9 max
TOTAL	C/I/A C = 3,498 (52%) I = 1,999 (30%) A = 1,232 (18%) (n=6,729) 42 min 56 max	C/I/A C = 2,059 (24%) I = 4,674 (54%) A = 1,952 (22%) (n=8,685) 33 min 43 max	I/A I = 2,947 (57%) A = 2,198 (43%) (n=5,145) 33 min 42 max	I/A I = 1,120 (32%) A = 2,375 (68%) (n=3,495) 31 min 39 max	I/A I = 195 (22%) A = 695 (78%) (n=890) 34 min 43 max	I/A I = 42 (7%) A = 583 (93%) (n=625) 42 min 53 max	C/I/A C = 5,557 (22%) I = 10,977 (43%) A = 9,035 (35%) (n=25,569) 34 min 44 max

Note: Of the 28,712 felony convictions in FY 2001/02, 3,143 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing or extraordinary mitigation). Sentences resulting in life without parole or death were excluded from the calculation of the average minimum and maximum sentences.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/02 Felony Statistical Report Data.

Convictions and Sentences by Offense Class and Prior Record Level (continued)
FY 2001/02 Felonies

Offense Class	Prior Record Level						Total
	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
F	I/A I = 423 (74%) A = 150 (26%) (n=573) 15 min 18 max	I/A I = 387 (62%) A = 239 (38%) (n=626) 16 min 19 max	I/A I = 205 (50%) A = 206 (50%) (n=411) 18 min 22 max	A A = 187 (100%) (n=187) 21 min 26 max	A A = 30 (100%) (n=30) 27 min 32 max	A A = 19 (100%) (n=19) 33 min 40 max	I/A I = 1,015 (55%) A = 831 (45%) (n=1,846) 18 min 22 max
G	I/A I = 499 (79%) A = 133 (21%) (n=632) 11 min 14 max	I/A I = 702 (71%) A = 282 (29%) (n=984) 13 min 16 max	I/A I = 372 (50%) A = 371 (50%) (n=743) 14 min 17 max	I/A I = 172 (37%) A = 290 (63%) (n=462) 18 min 22 max	A A = 86 (100%) (n=86) 19 min 23 max	A A = 52 (100%) (n=52) 26 min 32 max	I/A I = 1,745 (59%) A = 1,214 (41%) (n=2,959) 15 min 19 max
H	C/I/A C = 1,624 (60%) I = 829 (31%) A = 253 (9%) (n=2,706) 6 min 7 max	I/A I = 2,355 (75%) A = 770 (25%) (n=3,125) 7 min 9 max	I/A I = 1,291 (56%) A = 1,014 (44%) (n=2,305) 9 min 11 max	I/A I = 551 (36%) A = 979 (64%) (n=1,530) 10 min 12 max	I/A I = 119 (28%) A = 300 (72%) (n=419) 13 min 16 max	A A = 255 (100%) (n=255) 18 min 22 max	C/I/A C = 1,624 (16%) I = 5,145 (50%) A = 3,571 (34%) (n=10,340) 10 min 12 max
I	C C = 1,874 (100%) (n=1,874) N/A	C/I C = 2,059 (68%) I = 964 (32%) (n=3,023) N/A	I I = 1,079 (100%) (n=1,079) N/A	I/A I = 397 (49%) A = 405 (51%) (n=802) 7 min 9 max	I/A I = 76 (36%) A = 136 (64%) (n=212) 8 min 10 max	I/A I = 42 (26%) A = 120 (74%) (n=162) 9 min 11 max	C/I/A C = 3,933 (55%) I = 2,558 (36%) A = 661 (9%) (n=7,152) 8 min 9 max
TOTAL	C/I/A C = 3,498 (52%) I = 1,999 (30%) A = 1,232 (18%) (n=6,729) 42 min 56 max	C/I/A C = 2,059 (24%) I = 4,674 (54%) A = 1,952 (22%) (n=8,685) 33 min 43 max	I/A I = 2,947 (57%) A = 2,198 (43%) (n=5,145) 33 min 42 max	I/A I = 1,120 (32%) A = 2,375 (68%) (n=3,495) 31 min 39 max	I/A I = 195 (22%) A = 695 (78%) (n=890) 34 min 43 max	I/A I = 42 (7%) A = 583 (93%) (n=625) 42 min 53 max	C/I/A C = 5,557 (22%) I = 10,977 (43%) A = 9,035 (35%) (n=25,569) 34 min 44 max

Note: Of the 28,712 felony convictions in FY 2001/02, 3,143 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing or extraordinary mitigation). Sentences resulting in life without parole or death were excluded from the calculation of the average minimum and maximum sentences.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/02 Felony Statistical Report Data.

Convictions and Sentences by Offense Class and Prior Record Level
FY 2001/02 Felonies

Offense Class	Prior Record Level						Total
	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	A A = 53 (100%) (n=53) Life/Death	A A = 21 (100%) (n=21) Life/Death	A A = 15 (100%) (n=15) Life/Death	A A = 9 (100%) (n=9) Life/Death	A A = 3 (100%) (n=3) Life/Death	A A = 3 (100%) (n=3) Life/Death	A A = 104 (100%) (n=104) Life/Death
B1	A A = 36 (100%) (n=36) 208 min 262 max	A A = 29 (100%) (n=29) 243 min 300 max	A A = 25 (100%) (n=25) 294 min 363 max	A A = 11 (100%) (n=11) 331 min 405 max	A A = 3 (100%) (n=3) 347 min 425 max	A A = 3 (100%) (n=3) 384 min 470 max	A A = 107 (100%) (n=107) 258 min 320 max
B2	A A = 90 (100%) (n=90) 138 min 174 max	A A = 78 (100%) (n=78) 175 min 220 max	A A = 47 (100%) (n=47) 198 min 247 max	A A = 32 (100%) (n=32) 241 min 298 max	A A = 7 (100%) (n=7) 215 min 267 max	A A = 5 (100%) (n=5) 281 min 345 max	A A = 259 (100%) (n=259) 177 min 222 max
C	A A = 118 (100%) (n=118) 63 min 85 max	A A = 165 (100%) (n=165) 78 min 103 max	A A = 197 (100%) (n=197) 89 min 116 max	A A = 257 (100%) (n=257) 99 min 128 max	A A = 87 (100%) (n=87) 113 min 145 max	A A = 82 (100%) (n=82) 124 min 158 max	A A = 906 (100%) (n=906) 92 min 120 max
D	A A = 294 (100%) (n=294) 50 min 69 max	A A = 233 (100%) (n=233) 61 min 83 max	A A = 184 (100%) (n=184) 84 min 111 max	A A = 98 (100%) (n=98) 95 min 124 max	A A = 27 (100%) (n=27) 113 min 145 max	A A = 20 (100%) (n=20) 130 min 165 max	A A = 856 (100%) (n=856) 69 min 93 max
E	I/A I = 248 (70%) A = 105 (30%) (n=353) 22 min 35 max	I/A I = 266 (66%) A = 135 (34%) (n=401) 26 min 40 max	A A = 139 (100%) (n=139) 30 min 46 max	A A = 107 (100%) (n=107) 40 min 58 max	A A = 16 (100%) (n=16) 49 min 68 max	A A = 24 (100%) (n=24) 58 min 78 max	I/A I = 514 (49%) A = 526 (51%) (n=1,040) 31 min 47 max

FIGURE B: MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A *240-300* **192-240** *144-192*	A *288-360* **230-288** *173-230*	A *336-420* **269-336** *202-269*	A *384-480* **307-384** *230-307*	A *Life Without Parole* **346-433** *260-346*	A *Life Without Parole* **384-480** *288-384*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *189 - 237* **151 - 189** *114 - 151*	A *220 - 276* **176 - 220** *132 - 176*	A *251 - 313* **201 - 251** *151 - 201*	A *282 - 353* **225 - 282** *169 - 225*	A *313 - 392* **251 - 313** *188 - 251*
C	A *73 - 92* **58 - 73** *44 - 58*	A *100 - 125* **80 - 100** *60 - 80*	A *116 - 145* **93 - 116** *70 - 93*	A *133 - 167* **107-133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101-135*
D	A *64 - 80* **51 - 64** *38 - 51*	A *77 - 95* **61 - 77** *46 - 61*	A *103 - 129* **82 - 103** *61 - 82*	A *117 - 146* **94 - 117** *71 - 94*	A *133 - 167* **107 - 133** *80 - 107*	A *146 - 183* **117 - 146** *88 - 117*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *34 - 42* **27 - 34** *20 - 27*	A *46 - 58* **37 - 46** *28 - 37*	A *53 - 66* **42 - 53** *32 - 42*	A *59 - 74* **47 - 59** *35 - 47*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *15 - 19* **12 - 15** *9 - 12*	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *20 - 25* **16 - 20** *12 - 16*	A *21 - 26* **17 - 21** *13 - 17*	A *29 - 36* **23 -29** *17 - 23*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 -10** *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
*Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

3-20-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dukes Baker	Intern - Sen Gulley
Bill Rowe	NC Justice Center
Al Rigby	"
Jeb Alley	Alley Associates
M Mark Benson	Capitol Group
Denise Hundley	Intern - Senator Clodfelter
Brian R. Anderson	Sen. Pittenger
Amy Ross	Intern - Senator Dalton
Patricia Pender	NCACC
Laura Logan	FAMM
Mark Ezell	FAMM

VISITOR REGISTRATION SHEET

J-1 Committee — 3-20-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Obuchowski	NC State AFL-CIO
Pat A. Young	LLPP
Joe Johnson	Raleigh Legal
P G P	NC [illegible]
Julie A. [illegible]	NC Statesman
Chip Killian	Moore Van Allen
Sarah Kargers	NARAL Pro-Choice America in NC
Jim Blackburn	NC Association of County Commissioners
Heather Hunter	N.C.S.U.
Tawanda Etheridge	NC Sentencing Commission
John Madler	" "

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 25, 2003	10:00 a.m.	1027 LB

SECOND CORRECTION

SB 394 REMOVED FROM AGENDA

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB 136	Dissenters' Rights Clarifications	Sen. Clodfelter
•	SB 440	Failure to Appear/Citation	Sen. Clodfelter/Dann

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

March 25, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 10:03 am with seven members present. He introduced Page, Ashley Hukens from Knightdale, NC and Amber Lumley, who was shadowing Senator Hargett as an intern.

SB 136 (Dissenters' Rights Clarifications) Committee Substitute was introduced by Senator Wib Gulley, Acting Chair. Bill sponsor, Senator Dan Clodfelter explained the bill, and moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Mr. Mark Davidson from the NC Bar Association spoke briefly on the bill. Senator Steve Metcalf moved for a Favorable Report. All members voted yes. Motion carried.

SB 440 (Failure to Appear/Citation) was introduced by Senator Gulley. Bill sponsor, Senator Dan Clodfelter explained that the bill would allow a judge to issue an order of arrest for a person who fails to appear in court where the person had received a citation charging a misdemeanor offense. The act is effective when it becomes law. See Bill Summary for further information. Senator's Bob Carpenter, Steve Metcalf, Charlie Albertson and Vernon Malone had questions. Staff attorney's Bill Gilkeson and Hal Pell answered the questions. Senator Clodfelter also answered questions. Senator Cecil Hargett moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:15 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, March 25, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **440** Failure to Appear/Citation.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **136** Dissenters' Rights Clarifications.
Draft Number: PCS15133
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

Version

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 136
PROPOSED COMMITTEE SUBSTITUTE S136-PCS15133-RU-3

Short Title: Dissenters' Rights Clarifications. (Public)

Sponsors:

Referred to:

February 24, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING DISSENTERS' RIGHTS WITH REGARD TO MAJORITY CONSENT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-13-02(a) reads as rewritten:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i)

alters or abolishes a preferential right of the shares; (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate ~~votes;~~votes, other than an amendment of the articles of incorporation permitting action without meeting to be taken by less than all shareholders entitled to vote, without advance notice, or both, as provided in G.S. 55-7-04; (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit corporation or cooperative organization; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares."

SECTION 2. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 136

Short Title:	Dissenters' Rights Clarifications.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 24, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING DISSENTERS' RIGHTS WITH REGARD TO MAJORITY CONSENT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-13-02(a) reads as rewritten:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters,

or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes; (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit corporation or cooperative organization; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

For purposes of subdivision (4) of this subsection, an amendment of the articles of incorporation to allow action to be taken on a matter without a meeting by less than all shareholders entitled to vote on the matter pursuant to G.S. 55-7-04(a), or to provide that advance notice of an action to be taken without meeting by shareholders is not required pursuant to G.S. 55-7-04(d), or both, shall not constitute an amendment that excludes or limits the right of shares to vote on any matter or to cumulate votes."

SECTION 2. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 440*

Short Title:	Failure to Appear/Citation.	(Public)
Sponsors:	Senators Clodfelter; and Dannelly.	
Referred to:	Judiciary I.	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COURT TO ISSUE AN ORDER FOR ARREST WHEN A DEFENDANT FAILS TO APPEAR IN COURT AFTER RECEIVING A CITATION FOR A MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-302(f) reads as rewritten:

"(f) Citation No Bar to Criminal Summons or Warrant. – If the offense is a misdemeanor, a criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense. If a defendant fails to appear in court as directed by a citation that charges the defendant with a misdemeanor, an order for arrest for failure to appear may be issued by a judicial official."

SECTION 2. G.S. 15A-305(b) reads as rewritten:

"(b) When Issued. – An order for arrest may be issued when:

(1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.

(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.

(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to ~~G.S. 15A-303.~~ G.S. 15A-303 or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.

(4) A defendant has violated the conditions of probation.

(5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.

(6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.
(7) The common-law writ of capias has heretofore been issuable.
(8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.
(9) It is authorized by G.S. 5A-16 in connection with contempt proceedings."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 440:
Failure to Appear/Citation.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	March 25, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would allow a judge to issue an order of arrest for a person who fails to appear in court where the person had received a citation charging a misdemeanor offense. The act is effective when it becomes law.***

CURRENT LAW: The issuance of a citation charging a misdemeanor does not bar a court from issuing a criminal summons or warrant for the charged offense. There is no provision in the statute authorizing the issuance of an order for arrest where a person charged by citation with a misdemeanor fails to appear in court.

BILL ANALYSIS:

Section 1: This section would amend the statutory provision that allows for a summons or warrant to be issued where a previously issued citation charges a misdemeanor offense. If the person receiving a citation fails to appear in court, the amendment would allow a judicial official to issue an order for arrest for that failure to appear.

Section 2: This section would amend the statutory provision that allows for the issuance of an order of arrest when a person fails to appear, as required by a criminal summons. The amendment would allow an order for arrest of a person who fails to appear, as required by a citation charging a misdemeanor.

Section 3: The act is effective when it becomes law.

BACKGROUND:

- A criminal summons states the crime or infraction of which the person summoned is accused, and orders the person to appear and answer to the charges made against him. Any person authorized to issue warrants for arrest may issue a criminal summons. If the summoned person fails to appear, an order of arrest may be issued. If the failure to appear is willful, the person may be punished for contempt of court.
- A citation is a directive, issued by a law enforcement officer or others authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.
- Other examples where orders for arrest may also be issued:
    - a grand jury has issued a true bill of indictment
    - a defendant who has been arrested, and released on bond, fails to appear
    - a defendant has violated probation conditions
    - in a proceeding where the defendant has become subject to the court's jurisdiction
    - as authorized by statute in connection with material witness proceedings

S440-smrk-01

VISITOR REGISTRATION SHEET

S-1 Committee — 3-25-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Curtis Goff	Sen. Rucho's Office
John Goodman	Mercer & Assoc.
Bruce Thompson	Parker Poe Adams & Bernstein, LLP
Elisa Wolper	AOC
Michelle Frazier	NC Bar Ass'n
Mark Davis	NC Bar Assn
Chris Capel	NC Bar Assn
Denise Huntley	Sen. Clodfelter's intern
Dallas Baker	Sen. Gulley intern
Patricia Ramey	NCACC
Mike Obie	NC AFLCIO

VISITOR REGISTRATION SHEET

J-1 - Committee — 3-25-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank Melahor	Intern (Ben Horton)
Nancy Thompson	UMCIC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 1, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB 93	Amend Special Probation Definition	Sen. Gulley
•	SB 539	State Bar Amendments	Sen. Rand/Hartsell/Smith

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 1, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 10:06 am with nine members present. He introduced Page, Lynton Ray from Clayton, NC.

SB-93 (Amend Special Probation Definition) was introduced by Senator Clodfelter. Staff attorney, Hal Pell explained the bill would amend the statute that provides for the maximum period of confinement that may be served as an incident of special probation, and would be effective December 1, 2003. It would apply to all offenses committed on or after that date. See Bill Summary for further information. Senator Clodfelter asked for a report from the J-1 Subcommittee appointed to study the bill. Senator Phil Berger, member of the Subcommittee stated that the committee voted unanimously for a Favorable Report, and that it be recommended to the full J-1 Committee to comply by voting the same. Senator Charlie Albertson had a question about the bill. The questions were answered by Mr. John Madler, from the NC Sentencing Commission. Mr. Madler said he would supply more information on structured sentencing that would help answer any questions the committee members may have. Senator Ham Horton moved for a Favorable Report. All members voted yes. Motion carried.

SB-539 (State Bar Amendments) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained the bill in the absence of bill sponsor, Senator Tony Rand. He stated that the bill would amend the law governing operations of the North Carolina State Bar Association with regards to certain disciplinary matters. It would require disclosure of disciplinary actions taken in other states of attorneys licensed in other states who wish to appear in a single case in North Carolina. It gives the Bar authority to subpoena financial records of suspended and disbarred attorneys relating to account into which client for fiduciary funds were deposited. See Bill Summary for further information. Senator's Charlie Albertson, Ham Horton and R.C. Soles had questions. Ms. Carolin Bakewell, staff attorney with the NC State Bar Association spoke on the bill and answered questions. Staff attorney, Walker Reagan also answered questions. Senator Soles offered an

Amendment to the bill in Section 1, and moved for adoption of the Amendment. All members voted yes. Amendment was adopted and will be rolled into a Committee Substitute to the original bill. Senator Wib Gulley moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:41 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 02, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **93** Amend Special Probation Definition.

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **539** State Bar Amendments.

Draft Number:	PCS75192
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 93

Short Title:	Amend Special Probation Definition.	(Public)
Sponsors:	Senator Gulley.	
Referred to:	Judiciary I.	

February 19, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF SPECIAL PROBATION TO REMOVE THE SIX-MONTH LIMITATION ON THE PERIOD OF IMPRISONMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344(e) reads as rewritten:

"(e) Special Probation in Response to Violation. – When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed ~~six months or one fourth~~ one-fourth the maximum sentence of imprisonment imposed for the ~~offense, whichever is less.~~ offense. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. No confinement other than an activated suspended sentence may be required beyond the period of

probation or beyond two years of the time the special probation is imposed, whichever comes first."

SECTION 2. G.S. 15A-1351(a) reads as rewritten:

"(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed ~~six months or one fourth~~ one-fourth the maximum sentence of imprisonment imposed for the offense, ~~whichever is less,~~ and no confinement other than an activated suspended sentence may be required beyond two years of conviction. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 93:
Amend Special Probation Definition.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Gulley
Date:	April 1, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would amend the statute that provides for the maximum period of confinement that may be served as an incident of special probation. The act would be effective December 1, 2003, and would apply to all offenses committed on or after that date.***

CURRENT LAW: When a convicted offender violates a condition of probation, a court may place him on special probation. As part of the conditions of special probation, the court may order that the offender serve a period or periods of confinement (split sentence). The periods may be continuous or non-continuous. The total for all periods of confinement may not exceed the lesser of six months, or one-fourth of the maximum sentence of imprisonment imposed for the offense.

BILL ANALYSIS:

Section 1: The bill would amend the provision providing for Special Probation by deleting the limitation of six months. Under the act, the total for all periods of confinement could not exceed one-fourth of the maximum sentence of imprisonment imposed for the offense. Because the current maximum sentence eligible for an intermediate sentencing option (including a split sentence) is thirty-six months, the maximum amount of confinement that could be imposed under the amended statute would be nine months.

Section 2: The statute providing for the court's authority to order confinement would be amended to be consistent with the redefinition of Special Probation (see Section 1).

Section 3: The act would be effective December 1, 2003, and would apply to all offenses committed on or after that date.

BACKGROUND: This bill presents one of the alternatives presented in the Report of the NC Sentencing and Policy Commission to the 2002 Session of the 2001 NC General Assembly (May 2002). Special Probation is an intermediate sanction. The Commission report states that by removing the six month limitation, judges might be more amenable to giving an offender special probation when an intermediate sentencing option was authorized. The Commission also considered that judges might, on a more frequent basis and as a matter of extraordinary mitigation, impose special probation with a longer active sentence (than is currently authorized). According to the report, the impact of the measure is limited; it would only impact those grid cells on the structured sentencing chart where there is an intermediate sentencing option and the maximum sentence is greater than twenty-four months

S93.1-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 539
PROPOSED COMMITTEE SUBSTITUTE S539-PCS75192-RU-6

Short Title: State Bar Amendments. (Public)

Sponsors:

Referred to:

March 26, 2003

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAW GOVERNING THE LIMITED PRACTICE OF OUT-OF-STATE ATTORNEYS-AT-LAW AND THE OPERATION OF THE COUNCIL AND DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-4.1 reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North

Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

SECTION 2. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the Council is hereby vested, as an agency of the State, with the authority to regulate the professional conduct of licensed attorneys. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists; determine whether a member is disabled; and formulate and adopt procedures for accomplishing these purposes. The Council or any committee thereof, including the Client Security Fund and the Disciplinary Hearing Commission or any committee thereof, shall have the authority to subpoena financial records of any licensed attorneys, attorneys whose licenses have been suspended, or disbarred attorneys, relating to any account into which client or fiduciary funds have been deposited. The Council may publish an official journal concerning matters of interest to the legal profession and may acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes; and

to do all things necessary in the furtherance of the purposes of this Article as are not prohibited by law."

SECTION 3. G.S. 84-28.1(a) reads as rewritten:

"(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of ~~15~~ 20 members. ~~Ten~~ Twelve of these members shall be members of the North Carolina State Bar, and shall be appointed by the Council. The other ~~five~~ eight shall be citizens of North Carolina not licensed to practice law in this or any other state, ~~three~~ four of whom shall be appointed by the Governor, ~~one~~ two by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and ~~one~~ two by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The Council shall designate one of its appointees as chair and another as vice-chair. The chair shall have actively practiced law in the courts of the State for at least 10 years. Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The Council, the Governor, and the General Assembly respectively, shall appoint members to fill unexpired terms when vacancies are created by resignation, disqualification, disability or death, except that vacancies in appointments made by the General Assembly may also be filled as provided by G.S. 120-122. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chair may serve one additional three-year term in that capacity. No member of the Council may be appointed to the commission."

SECTION 4. This act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 539

Short Title:	State Bar Amendments.	(Public)
Sponsors:	Senators Rand, Hartsell; and Smith.	
Referred to:	Judiciary I.	

March 26, 2003

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAW GOVERNING THE LIMITED PRACTICE OF OUT-OF-STATE ATTORNEYS-AT-LAW AND THE OPERATION OF THE COUNCIL AND DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-4.1 reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly

admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement signed by the attorney accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

SECTION 2. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the Council is hereby vested, as an agency of the State, with the authority to regulate the professional conduct of licensed attorneys. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists; determine whether a member is disabled; and formulate and adopt procedures for accomplishing these purposes. The Council or any committee thereof, including the Client Security Fund and the Disciplinary Hearing Commission or any committee thereof, shall have the authority to subpoena financial records of any licensed attorneys, attorneys whose licenses have been suspended, or disbarred attorneys, relating to any account into which client or fiduciary funds have been deposited. The Council may publish an official journal concerning matters of interest to the legal profession and may acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes; and to do all things necessary in the furtherance of the purposes of this Article as are not prohibited by law."

SECTION 3. G.S. 84-28.1(a) reads as rewritten:

"(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of ~~15~~ 20 members. ~~Ten~~ Twelve of these members shall be members of the North Carolina State Bar, and shall be appointed by the Council. The other ~~five~~ eight shall be citizens of North Carolina not licensed to practice law in this or any other state, ~~three~~ four of whom shall be appointed by the Governor, ~~one~~ two by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and ~~one~~ two by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The Council shall designate one of its appointees as chair and another as vice-chair. The chair shall have actively practiced law in the courts of the State for at least 10 years. Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The Council, the Governor, and the General Assembly respectively, shall appoint members to fill unexpired terms when vacancies are created by resignation, disqualification, disability or death, except that vacancies in appointments made by the General Assembly may also be filled as provided by G.S. 120-122. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chair may serve one additional three-year term in that capacity. No member of the Council may be appointed to the commission."

SECTION 4. This act becomes effective July 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-1-03

S. B. No. 539 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) SOLES
Sen.)

moves to amend the bill on page 1, line 16

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE WORDS "SHALL" AND "CONTAIN" THE WORDS "BE SIGNED BY THE ATTORNEY AND SHALL"; AND

ON PAGE 2, LINE 13, BY DELETING THE WORDS "SIGNED BY THE ATTORNEY".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 539:
State Bar Amendments.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Rand
Date:	April 1, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 539 would amend the law governing operations of the North Carolina State Bar with regards to certain disciplinary matters. The bill would require disclosure of disciplinary actions taken in other states of attorneys licensed in other states who wish to appear in a single case in North Carolina. The bill also gives the Bar the authority to subpoena financial records of suspended and disbarred attorneys relating to account into which client or fiduciary funds were deposited. The bill expands the disciplinary hearing commission from 15 to 20 members.***

CURRENT LAW: Currently, an attorney licensed out-of-state may, on motion, be admitted to practice in a single case based on certain conditions including being subjected to the jurisdiction of the NC courts and the NC State Bar and that the attorney has associated an attorney licensed in NC on the case. The State Bar Council, the governing body of the NC State Bar, has the authority to subpoena records in disciplinary hearings. The current Disciplinary Hearing Commission of the NC State Bar consists of 15 members, 10 of who are members of the State Bar appointed by the Council, and 5 non-lawyers appointed by the Governor, Speaker and President Pro Tempore.

BILL ANALYSIS: Section 1 of the bill amends the section allowing out-of-state attorneys to be admitted to practice in NC on a single case by adding an additional condition that the attorney disclose all the attorney's disciplinary history.

Section 2 amends the powers of the State Bar Council to permit the Council, or any of its committees, including the Client Security Fund and the Disciplinary Hearing Commission, to subpoena financial records relating to any account into which client or fiduciary funds were deposited. This authority will apply to former attorneys whose licenses have been suspended or revoked, as well as licensed attorneys. Currently there is some question of the jurisdiction of the Council over former attorneys.

Section 3 expands the Disciplinary Hearing Commission of the NC State Bar from 15 members to 20 members. Two additional members will be appointed by the Council from members of the NC State Bar (currently 10 members). One additional member will be appointed by the Governor (currently 3 members). And one additional member will be appointed by each of the Speaker and the President Pro Tempore (currently 1 member a piece). Members of the Commission serve 3-year terms. The Disciplinary Hearing Commission conducts hearings on disciplinary actions brought against attorneys.

EFFECTIVE DATE: The bill becomes effective July 1, 2003.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-1-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Westbrook	UTU
Tom Coley	CWA
Doris Weaver	CWA
Dina DiMaio	NCBA
Dallas Baker	Intern - Sen. Gulley
John Madler	NC Sentencing Commission
Ginny Hevener	"
S. Katzenelson	- " -
Carolin Bakewell	NC State Bar
Tom Lunsford	NC State Bar
John McMillan	NAFS

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-1-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brad Dixon	Intern
Denise Huntley	Intern - Sen. Clodfelter
Dan Lance	NCW
Ruth Reynolds	President of NC Association of Private Investigators Charlotte NC
Mildred Spearman	NC Dept. of Correction
Al Ripley	NC Justice Center
Rob Schofield	NC Justice Center
[signature]	Raleigh [illegible]

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
THURSDAY	APRIL 3, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-160	Delegations of Authority	Sen. Clodfelter

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 3, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:06 am with ten members present. He introduced Page, Frank Wazeter from Apex, NC.

SB-160 (Delegations of Authority) Committee Substitute was introduced by Senator Phillip Berger, Vice Chair. Bill sponsor, Senator Dan Clodfelter explained the bill and moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter said the bill would do two main things: First, it would state the General Assembly's intent to abolish a narrow rule of statutory construction called "Dillon's Rule." Which courts have sometimes used to limit the way local governments can implement authority the General Assembly has given them. Sections 1 and 6 of the bill. Second, it would provide that local ordinance conflicts with State or federal law only if the higher law "expressly" says its regulation pre-empts local regulation in the field. Current law says a conflict exists if the higher law "clearly" pre-empts. Sections 3 and 7 of the bill. Effective when it becomes law. See Bill Summary for further information. Senator Berger asked for questions or comments from members and audience. Senator's Charlie Albertson, Wib Gulley, Robert Carpenter, David Hoyle, Ham Horton, Vernon Malone and R.C. Soles had questions. Senator Clodfelter answered questions. Mr. David Owens from NC Institute of Government, Mr. Paul Meyer from the Association of County Commissioners, Mr. Tim Minton, from NC Home Builders, Mr. Ellis Hankins, Executive Director of the League of Municipalities, Mr. Paul Wilms, Director NC Home Builders Association, Mr. David Knight, Representative of NC American Planning Association, Mr. Steve Hall, NC Farm Bureau and Ms. Stephanie Simpson, NC Realtors Association all spoke on the bill making comments and answering questions. No action taken on bill.

Being no further discussion the meeting adjourned at 10:55 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 160
PROPOSED COMMITTEE SUBSTITUTE S160-CSRR-1 [v.3]

4/2/2003 11:51:28 AM

Short Title: Delegations of Authority. (Public)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO COUNTIES AND CITIES AND TO CONFIRM FLEXIBILITY IN THE EXECUTION OF THOSE DELEGATED AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-3 is amended by adding a new subsection to read:

"(d) When any power, duty, function, privilege, or immunity is granted by general law and by a city charter, a city may freely elect to use any or all of those authorizations, either individually or in combination, and shall follow the procedures, if any, set forth for those authorities so chosen. In the case of a direct conflict or inconsistency between general law and a charter provision, the charter procedure shall control."

SECTION 2. G.S. 160A-4 reads as rewritten:

"**§ 160A-4. Broad construction.**

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of city charters~~ It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to cities. Rather, all grants of authority to cities shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers cities shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions.

This section neither expands nor restricts the authority of cities to impose taxes pursuant to Article 9 of this Chapter or to finance public enterprises pursuant to Article 16 of this Chapter. This section neither expands nor restricts the purposes for which regulations may be adopted pursuant to Article 19 of this Chapter."

SECTION 3. G.S. 160A-174 reads as rewritten:

"Article 8.

"Delegation and Exercise of the General Police Power.

"§ 160A-174. General ordinance-making power.

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute ~~clearly shows~~expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition."

SECTION 4. G.S. 160A-177 reads as rewritten:

"§ 160A-177. Enumeration not exclusive.

The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, ~~and~~ or conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. Where a city is authorized to regulate, restrict, or prohibit acts, omissions, or conditions by this Chapter, a city may freely elect to use any or all those authorizations, either individually or in combination; and shall follow the procedures for adoption set forth for those authorities so chosen. In the case of a direct conflict or inconsistency between a charter provision and other provision of law regarding the procedure to be employed for adoption, the charter procedure shall control."

SECTION 5. G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

(a) A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 5.1. Part 1 of Article 20 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-466. Revenue and expenditures for joint undertakings.**

Where two or more units of local government are engaged in a joint undertaking, they may enter into agreements regarding financing, expenditures, and revenues related to the joint undertaking. Funds collected by any participating unit of government may be transferred to and expended by any other unit of government in a manner consistent with the agreement. An agreement regarding expenses and revenues may be of reasonable duration, not to exceed ninety-nine years."

SECTION 5.2. Article 2 of Chapter 158 of the General Statutes is amended by adding a new section to read:

"**§ 158-7.3. Interlocal agreements concerning economic development.**

(a) Any two or more units of local government may enter into contracts or agreements to execute undertakings pursuant to G.S. Chapter 160A, Article 20, Part 1, under which each participating local government agrees to provide resources for the development of an industrial or commercial park or industrial or commercial site pursuant to G.S. 158-7.1. In consideration for that participation, the unit or units in which the park or site is located may agree to place the proceeds from some or all

property taxes levied on the park or site into a common fund or transfer those proceeds to a nonprofit corporation or other entity. The proceeds placed into the common fund or transferred to the other entity may then be distributed among the participating local governments as provided in the contract or agreement.

(b) Any undertaking entered into pursuant to this section may be for that period that is agreed to by the participating local governments, up to a maximum of forty years.

(c) Any undertaking entered into pursuant to this section is binding upon each participating local government for the duration of the contract or agreement. Any participating local government may bring an action to specifically enforce the contract or agreement."

SECTION 6. G.S. 153A-4 reads as rewritten:

"**§ 153A-4. Broad construction.**

It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of local acts~~It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to counties. Rather all grants of authority to counties shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to the exercise of the power. Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers counties shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions.

This section neither expands nor restricts the authority to impose taxes pursuant to Article 7 of this Chapter or to finance public enterprises pursuant to Article 15 of this Chapter. This section neither expands nor restricts the purposes for which regulations may be adopted pursuant to Article 18 of this Chapter."

SECTION 7. G.S. 153A-121 reads as rewritten:

"Article 6.

"Delegation and Exercise of the General Police Power.

"**§ 153A-121. General ordinance-making power.**

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health.

(d) A county ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution.

(2) The ordinance makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law.

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law.

(4) The ordinance purports to regulate a subject that counties are expressly forbidden to regulate by State or federal law.

(5) The ordinance purports to regulate a field for which a State or federal statute expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.

(6) The elements of an offense defined by a county ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude county ordinances requiring a higher standard of conduct or condition."

SECTION 8. G.S. 153A-124 reads as rewritten:

"**§ 153A-124. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor is it a limit on the general authority to adopt ordinances conferred on counties by G.S. 153A-121. Where a county is authorized to regulate, restrict, or prohibit acts, omissions, or conditions by this Chapter, by other general law, or by local act, a county may freely elect to use any or all of those authorizations, either individually or in combination, and shall follow the procedures for adoption set forth for those authorities so chosen."

SECTION 9. G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

(a) A county or its designated planning agency may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

(b) A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its

designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article.

(d) A county may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a county may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 10. This act is effective when it becomes law.

SENATE BILL 160:
Delegations of Authority

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 3, 2003	**Summary by:**	William R. Gilkeson
Version:	S160-CSRR-1 [v.3]		Committee Counsel

SUMMARY: ***Senate Bill 160 would do two main things:***

1. ***State the General Assembly's intent to abolish a narrow rule of statutory construction called "Dillon's Rule," which courts have sometimes used to limit the way local governments can implement authority the General Assembly has given them. The bill would strengthen existing language stating the General Assembly's intent that such grants of authority should be construed broadly.*** *Sections 2 and 6 of the bill.*
2. ***Provide that a local ordinance conflicts with State or federal law only if the higher law "expressly" says its regulation pre-empts local regulation in the field. Current law says a conflict exists if the higher law "clearly" pre-empts.*** *Sections 3 and 7 of the bill.*

Effective when it becomes law.

CURRENT LAW:

The North Carolina Constitution states that local governments have only the authority given to them by the General Assembly. The General Assembly could grant or remove a local government's power to exercise a kind of authority, such as to tax a certain way or spend money a certain way. The General Assembly could even change or abolish the local government itself. Senate Bill 160 would not change that relationship.

What has been in question is (1) how narrowly or broadly a local government may interpret a power granted to it by the General Assembly, and (2) how a general law enacted by the General Assembly should be read to determine if a local government ordinance conflicts with it.

Dillon's Rule: Beginning in the 1870s, N.C. courts used "Dillon's Rule" to answer that first question. The Rule was formulated in1872 by John F. Dillon (1831-1914), who was chief justice of the Iowa Supreme Court, the first judge of the 8th Circuit U.S. Court of Appeals, a Wall Street attorney, and author of a treatise on municipal corporations. Living in the era of New York's Tweed Ring and other examples of municipal waste and corruption, Dillon was quoted as saying that "those best fitted by their intelligence, business experience, capacity and moral character" generally did not hold local office, and that the conduct of municipal affairs was generally "unwise and extravagant."

Dillon's Rule stated that local governments had only 3 types of powers:

1. ***Those granted in express words.***
2. ***Those necessarily or fairly implied in or incident to the powers expressly granted.***
3. ***Those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.***

Dillon's Rule has been interpreted to mean that if there is a reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred.

In the early 1970s, the N.C. General Assembly enacted comprehensive revisions of the G.S. chapters about cities and counties. It placed in both Chapters statutes captioned "Broad Construction," G.S. 160A-4 and 153A-4, stating:

> ***It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. The this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to the exercise of the power. . . .*** *[This is the language in the city statute; 160A-4; the county statute, 153A-4, reads slightly differently.]*

In 1990, the State Supreme Court first applied the new "broad construction" statute in River Birch Associates v. Raleigh, 326 N.C. 100, concerning a subdivision ordinance. In 1994, the Supreme Court actually said the new statute supplanted Dillon's Rule. The court had before it a challenge brought by the Homebuilders Association of Charlotte against the Charlotte City Council's imposition of "user fees" for a variety of regulatory functions and for the use of city facilities. The Homebuilders argued that the city had exceeded its legislative authority, because while the General Assembly had authorized the city to conduct those functions, it had not authorized user fees. The city argued that the city had the right to use the fees even under the application of Dillon's Rule. The Court's opinion, written by Justice Henry Frye, said it did not matter whether the fees would stand the test of Dillon's Rule, because the General Assembly had stated a more flexible rule in G.S. 160A-4, and that, rather than Dillon's Rule, should now apply. Homebuilders Association of Charlotte v. City of Charlotte, 336 N.C. 37 (1994).

Later that year, however, the Supreme Court decided another case, Bowers v. City of High Point, 339 N.C. 413, in which it cited Dillon's Rule (not by name, but verbatim) as authority that the city did not have authority to expand police officer's separation allowance beyond the formula specified in statute. The Court's opinion, written by Chief Justice James Exum, did not mention its recent Homebuilders decision, and there was no dissent.

The NC Supreme Court's only later mention of Dillon's Rule by name occurred in 1999, in a dissent from its ruling in Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805 (1999), that Durham could not impose fees as a consequence of its authority to operate a stormwater and drainage system. The dissenter was Justice Frye, author of Homebuilders, who reminded the majority of what he said had been its earlier decision that the General Assembly by enacting its broad construction statutes in the 1970s had abolished "the now-defunct Dillon's Rule."

Pre-Emption. A related barrier to local governments' authority is North Carolina's approach to pre-emption. In fact, pre-emption was also an issue in at least two of the cases cited above, which also involved Dillon's Rule. G.S. 160A-174 gives cities the general authority to make ordinances, but it says they may not conflict with federal or State law and it lists the ways it may conflict with federal or State law. One of those ways is as follows:

> ***"The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation."***

The county chapter has no equivalent section, but case law has applied to same concept to it.

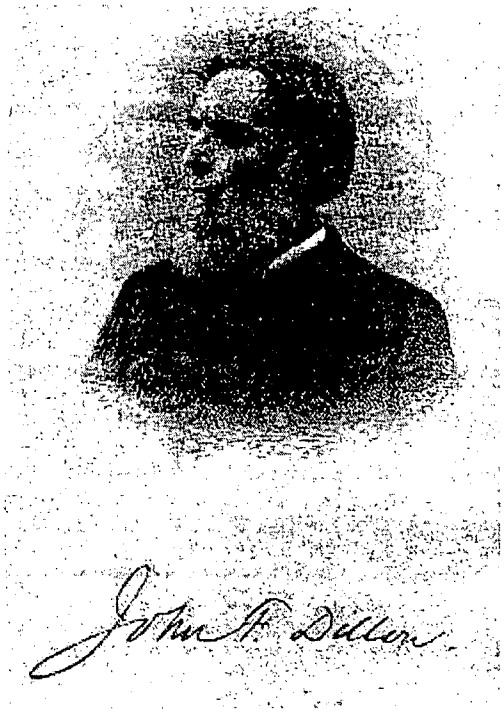
BILL ANALYSIS: The core sections of SB 160 are Sections 2 and 6, which address Dillon's Rule, and Sections 3 and 7, which address pre-emption. Each issue is addressed in both city statutes and the county statutes. The other sections of the bill supplement or qualify those main sections.

Dillon's Rule: Sections 2 and 6 add words to the city and county "broad construction" statutes calling Dillon's Rule by name and stating the General Assembly's intent that it no longer be applied. The bill further amends those statutes to make the city and county language parallel and to state that counties have the authority to carry out their delegated powers by adopting "reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions." In an effort to avoid affecting the debate about the authority of local governments to impose "impact fees" for certain activities, language has been added to both the city and county "broad construction" sections saying the sections neither expand nor restrict the local governments' existing authority to impose taxes or to finance public enterprises, or the purposes for which regulations may be adopted for planning and development.

Pre-Emption: Sections 3 and 7 say a local ordinance conflicts with a State or federal statute if it tries to regulate a field that the State or federal statute "expressly states" shall be entirely regulated from above. The current city statute uses the looser term "clearly shows." The city conflict-of-laws language is grafted onto the county statute, which had no equivalent language statutory language.

Other sections of the bill do the following:

- Where a city or county has multiple authorizations to act, it may use any or all of them, individually or in combination, following the procedures specified for that authority. *(Sections 1, 4, and 8.)*
- A city or county may combine ordinances into a unified ordinance with a uniform definitional and organizational structure, even if the ordinances come from different grants of authority. *(Sections 5 and 9.)*
- Authorize local governments that are jointly undertaking a development project to enter into agreements to finance the project. *Sections 5.1 and 5.2.*



(From contemporary biographical sketch)

JOHN F. DILLON was born in Montgomery County, New York, December 25, 1831. His parent removed to Davenport in 1838, then a frontier village in the new Territory of Iowa. Here the son was educated in the common schools and when seventeen began the study of medicine with Dr. E. S. Barrows. He attended medical lectures at the Keokuk Medical College but finally concluded to study law. He entered the office of John P. Cook and pursued his legal studies until admitted to the bar in 1852. Soon after he was elected Prosecuting Attorney and rose rapidly in the profession until, in 1858, he was elected judge of the Seventh District. He served with distinction four years and in 1863 was nominated by the Republican State Convention for Judge of the Supreme Court. He was elected and in 1868 became Chief Justice. In 1869 he was reelected for six years but before qualifying was appointed by President Grant United States Circuit Judge for the Eighth Circuit, consisting of the States of Iowa, Kansas, Missouri, Arkansas, Nebraska, Minnesota and Colorado. In 1869 he was made lecturer on Legal Jurisprudence in the State University of Iowa. He was the founder and editor of the Central Law Journal and author of a "Digest of the Decisions of the Supreme Court of Iowa," as well as five volumes of United States Circuit Court Reports from 1871 to 1880. In 1879 he resigned the Circuit Judgeship (a life appointment) and removed to New York City where he had been chosen Professor of Real Estate and Equity Jurisprudence of the Law Department of Columbia College. In 1891-2 he was Lecturer on Municipal Law in Yale College. In 1892 he was chosen president of the American Bar Association. He has long had charge of the legal business of the Union Pacific Railroad Company, the Western Union Telegraph Company and the Manhattan Elevated Railroad Company. He has found time to continue his law writing as the author of a "Commentary of the Law of Municipal Corporations," published in 1872, which has run through four editions; "Removal of Causes from State Courts to Federal Courts," published in 1875, which has passed through three editions; "Laws and Jurisprudence of England and America," being a series of lectures delivered before Yale University, published in Boston in 1895. Judge Dillon's works have had a large sale in England as well as in America, some editions having been published in London. In this country they were from the first recognized as standard legal authority. He is the author of many pamphlets on legal and historical affairs, and one of the most elegant memorial volumes that has appeared in this country, in memory of his wife and daughter who were lost at sea in July, 1898. His wife was the accomplished daughter of Hon. Hiram Price, long member of Congress from the Second Iowa District. From a boyhood of poverty and obscurity, but endowed with remarkable intellectual powers and untiring energy, John F. Dillon has by force of character, during a life of continuous work, reached the summit of the American Bar.

(1)

VISITOR REGISTRATION SHEET

J-1 Committee — 4-3-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cover	BPMHL
Stephanie Simpson	NCAR
Bob Sloane	NC Forestry Assoc.
BRUCE THOMPSON	PALMER POST
Beau Mills	NC Metropolitan Coalition
Paul Meyer	NCACC
Andy Romanet	NCLM
David Owens	Inst of Govt.
Nancy Thompson	NCIC
Preston Howard	NCIC
Denise Huntley	Sen. Clodfelter's intern

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-3-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	Conservation Council
Catherine Davis	ElectriCities
ELLIS HANKINS	NCLM
[illegible]	Poyner & Spruill
Dallas Baker	Intern - Sen. Gulley
Molly Diggins	NC Sierra Club
R. Paul Williams	NCMBA
Butch Gunnells	NC SDA
Kathryn Sawyer	Charlotte Chamber
Bill Scoggin	FCCI+
[illegible]	BB&S

VISITOR REGISTRATION SHEET

J-1 — 4/3/03

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Tim Minton	NC Home Builders Association
Lisa Martin	NC Home Builders Assoc.
David Light	NCAPA
Leanne Winner	NCSBA
DON HOBART	NC DOC
Leslie Bwaca	NCCBI
David Beam	P+S

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 8, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-161	Restrict Court-Ordered Arbitration	Sen. Clodfelter
•	SB-326	Soliciting SUTA Dumping a Felony	Sen. Hoyle
•	SB-439	Omnibus ESC Changes	Sen. Hoyle/Clodfelter
•	SB 537	Amend Public Enter. Customer Billing Privacy	Sen. Rand
•	SB 561	Legislative Meeting Notice Procedure	Sen. Rand

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 8, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:06 a.m. with eleven members present. He introduced Pages, Carl Burchette from Charlotte, NC and Andrew McIndoe from Oak Ridge, NC.

SB-161 (Restrict Court-Ordered Arbitration) Committee Substitute was introduced by Vice Chair, Senator Phillip Berger. Bill sponsor, Senator Dan Clodfelter explained that the Proposed Committee Substitute would change the jurisdictional amount for matters that may be referred by the civil court to nonbonding arbitration from $15,000 to the matters that are heard in district court, which is currently limited to claims of up to $10,000. See Bill Summary for further information. Senator's Wib Gulley, Charlie Albertson and Patrick Ballantine had questions on the bill. Senator Clodfelter answered the questions. Senator Wib Gulley moved for a Favorable Report. All members voted yes. Motion carried.

Senator Clodfelter stated that SB 537 would not be heard at this time and would be carried over for a future meeting.

SB-561 (Legislative Meeting Notice Procedure) was introduced by Senator Clodfelter and he asked staff attorney, Walker Reagan to explain the bill in the absence of bill sponsor, Senator Tony Rand. Mr. Reagan explained the bill and asked for comments or questions. Senator Wib Gulley had a question about language in line 9 and Senator R.C. Soles had a question about language in lines 18 and 19. Senator Clodfelter asked members if the language could be amended by staff attorneys and rolled into a Committee Substitute. All members agreed. Senator Wib Gulley moved for a Favorable Report for the Committee Substitute as amended. All members voted yes. Motion carried.

SB 439 (Omnibus ESC Changes) Committee Substitute was introduced by Senator R.C. Soles. Bill sponsor, Senator Dan Clodfelter explained that the Committee Substitute makes several changes to the unemployment laws requested by the Employment Security Commission, chiefly approval of a job search that is restricted to part-time employment for a person whose work history consists of part-time jobs. Changes are effective when the bill becomes law. See Bill Summary for further information. Senator's Clark

Jenkins, Phillip Berger and Patrick Ballantine had questions. Mr. David Klegg from the NC Employment Security Commission answered the questions. Senator Patrick Ballantine moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business, the meeting adjourned at 10:30 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 09, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **537** Amend Public Enter. Customer Billing Privacy.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **161** Restrict Court-Ordered Arbitration.
Draft Number: PCS65253
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **439** Omnibus ESC Changes.
Draft Number: PCS75232
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **561** Legislative Meeting Notice Procedure.
Draft Number: PCS75231
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 161
PROPOSED COMMITTEE SUBSTITUTE S161-PCS65253-RU-7

Short Title: Restrict Court-Ordered Arbitration. (Public)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO RESTRICT COURT-ORDERED NONBINDING ARBITRATION TO DISTRICT COURT ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-37.1(c) reads as rewritten:

"(c) This procedure may be employed in civil actions in district court, ~~where claims do not exceed fifteen thousand dollars ($15,000),~~ except that it shall not be employed in actions in which the sole claim is an action on an account, including appeals from magistrates on such actions."

SECTION 2. This act becomes effective October 1, 2003, and applies to actions and cases filed on or after that date.

SENATE BILL 161:
Restrict Court-Ordered Arbitration.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 8, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S161-CSRU-7[v.1]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 161 would change the jurisdictional amount for matters that may be referred by the civil court to nonbinding arbitration from $15,000 to the matters that are heard in district court, which is currently limited to claims of up to $10,000.***

CURRENT LAW: Current law allows the court (both district and superior) to refer civil actions to nonbonding arbitration when claims do not exceed $15,000. These arbitrations are to be referred and conducted in accordance with rules adopted by the Supreme Court. These rules are to insure that the right to a jury trial are to be preserved and that a dissatisfied party may have a trial de novo.

BILL ANALYSIS: The bill would limit court ordered nonbinding arbitration to only civil claims that are heard in district court. This would eliminate matters heard in superior court of up to $15,000 from being allowed to be referred to arbitration. As drafted, this will allow the dollar amount for these matters to adjust from time to time as the jurisdiction amount of district court may change.

EFFECTIVE DATE: The bill becomes effective October 1, 2003 and applies to actions and cases filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 161

Short Title:	Restrict Court-Ordered Arbitration.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO RESTRICT COURT-ORDERED NONBINDING ARBITRATION TO DISTRICT COURT ACTIONS IN WHICH CLAIMS DO NOT EXCEED TEN THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-37.1(c) reads as rewritten:

"(c) This procedure may be employed in civil actions in district court where claims do not exceed ~~fifteen thousand dollars ($15,000),~~ ten thousand dollars ($10,000), except that it shall not be employed in actions in which the sole claim is an action on an account, including appeals from magistrates on such actions."

SECTION 2. This act becomes effective October 1, 2003, and applies to actions and cases filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 561
PROPOSED COMMITTEE SUBSTITUTE S561-PCS75231-RU-10

Short Title: Legislative Meeting Notice Procedure. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT NOTICES OF LEGISLATIVE MEETINGS BE POSTED ON THE PRESS ROOM DOOR AND REPLACING IT WITH A REQUIREMENT OF ELECTRONIC POSTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.14A(b) reads as rewritten:

"(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or

(2) Notice ~~posted on the press room door of the State Legislative Building in Raleigh and~~ delivered or sent by electronic mail to the Legislative Services ~~Office.~~ Office, and the following actions taken by the appropriate legislative staff:

a. Posting on the General Assembly web site;

b. Sending notice by electronic mail to the legislative press accounts on the General Assembly domain; and

c. Sending notice by electronic mail to those who have requested notice by electronic mail.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly."

SECTION 2. This act becomes effective 30 days after it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 561

COMMITTEE SUBSTITUTE _____

DATE 8 APR 03

Amendment No. 1
(to be filled in by Principal Clerk)

Rep.) ~~Sen. Soles~~ Gulley
Sen.)

moves to amend the bill on page 1, lines 18-19

( ) WHICH CHANGES THE TITLE

by deleting those lines and substituting the following:

"c. Sending notice by electronic mail to those who have requested notice by electronic mail."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 561:
Legislative Meeting Notice Procedure.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 8, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 561 would eliminate the requirement that reasonable notice of committee meetings of the General Assembly be posted on the press room door and substitute notices send electronically.***

CURRENT LAW: Current law requires that reasonable public notice be given of all meetings of committees of the General Assembly. Reasonable public notice includes either notice given openly at a session of the Senate or House, or notice posted on the press room door at the Legislative Building and delivered to the Legislative Services Office.

BILL ANALYSIS: The bill would eliminate the current requirement that meeting notices be posted on the press room door and would substitute a procedure permitting meeting notices to be sent electronically to the Legislative Services Office and posting on the General Assembly's website, sending a copy to the legislative press accounts on the General Assembly domain, and sending the notices to persons who request an electronic copy.

BACKGROUND: The bill would become effective 30 days after it becomes law.

S561-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 561

Short Title:	Legislative Meeting Notice Procedure.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT NOTICES OF LEGISLATIVE MEETINGS BE POSTED ON THE PRESS ROOM DOOR AND REPLACING IT WITH A REQUIREMENT OF ELECTRONIC POSTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.14A(b) reads as rewritten:

"(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or

(2) Notice ~~posted on the press room door of the State Legislative Building in Raleigh and~~ delivered or sent by electronic mail to the Legislative Services ~~Office.~~ Office, and the following actions taken by the appropriate legislative staff:

a. Posting on the General Assembly web site;

b. Sending notice by electronic mail to the legislative press accounts on the General Assembly domain; and

c. Sending notice to those who have requested notice by electronic mail.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly."

SECTION 2. This act becomes effective 30 days after it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 439
PROPOSED COMMITTEE SUBSTITUTE S439-PCS75232-LR-1

Short Title: Omnibus ESC Changes. (Public)

Sponsors:

Referred to:

March 17, 2003

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-14(1) reads as rewritten:

"(1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

a. That, at the time of leaving, an adequate disability or health ~~condition,~~ condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty-five percent (85%) of the individual's regular wage, whichever is greater; and

b. That, at a reasonable time prior to leaving, the individual gave the employer notice of ~~his~~ the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the

employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work."

SECTION 2. G.S. 96-9(c)(2) reads as rewritten:

"(2) Charging of benefit payments. –

a. Benefits paid shall be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12.01G. The amount so allocated shall be multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid shall be charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family ~~hardship;~~ hardship shall not be charged to the account of an employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding

any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(a)(3) shall not be charged to the account of the base period employer(s).

d. Any benefits paid to any claimant under the following conditions shall not be charged to the account of the base period employer(s):

1. The benefits are paid for unemployment due directly to a major natural disaster, and
2. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
3. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be

charged to the experience rating account of any employer.

2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service."

SECTION 3. G.S. 96-14(1f) reads as rewritten:

"(1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes or there is evidence of domestic violence, sexual offense, or stalking, or the claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged. Evidence of domestic violence, sexual offense, or stalking may include: (i) law enforcement, court, or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault; and (iii) documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking."

SECTION 4. G.S. 96-9(d)(1) reads as rewritten:

"(1) a. Any nonprofit organization which becomes subject to this Chapter on or after January 1, 1972, shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this paragraph to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin within a benefit year established during the effective period of such election.

b. Any nonprofit organization which is or becomes subject to this Chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less

than four calendar years beginning with the date on which subjectivity begins by filing a written notice of its election with the Commission not later than 30 days immediately following the date of written notification of the determination of such subjectivity. Provided if notification is not by registered mail, the election may be made on or after January 1, 1972, within six months following the date of the written notification of the determination of such subjectivity. If such election is not made as set forth herein, no election can be made until after four calendar years have elapsed under the contributions method of payment.

c. Any nonprofit organization which makes an election in accordance with subparagraph b of this paragraph will continue after such four calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than 30 days prior to the next January 1, effective on such January 1. Provided, however, no employer granted or in reimbursement status will be allowed refund of any previous balances used in a transfer to reimbursement status.

d. Any nonprofit organization which has been paying contributions under this Chapter for a period of at least four consecutive calendar years subsequent to January 1, 1972, may elect to change to a reimbursement basis by filing with the Commission not later than 30 days prior to the next January 1 a written notice of election to become liable for payments in lieu of contributions, effective on such January 1. Such election shall not be terminable for a period of four calendar years. In the event of such an election, the account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever. Provided, however, any nonprofit employer formerly paying contributions who elects and qualifies to change to a reimbursement basis may be relieved of the requirement to pay one percent (1%) of taxable wages as required by G.S. 96-9(d)(2)a to the following extent and upon the following conditions:

1. Any nonprofit employer which has, for the year the election will be effective, an experience rating of 1.7 or less, will have transferred from its experience rating account an amount equal to one percent (1%) of its payroll as reported for each of the four calendar quarters which constitute the election year;

2. Any nonprofit employer which has, for the year the election will be effective, an experience rating of less than 2.7 but more than 1.7, will have transferred from its experience rating account an amount equal to one-half of one percent (.5%) of its payroll as reported for each of the four calendar quarters which constitute the election year. Such employers shall make advance payments to the Commission quarterly, computed at one-half of one percent (.5%) of the taxable wages reported as provided in G.S. 96-9(d)(2)a;
3. Any nonprofit employer which has, for the year the election will become effective, an experience rating of 2.7 or more, upon electing to change to a reimbursement basis, will meet all the requirements of G.S. 96-9(d)(2)a, including making advance payments computed at one percent (1%) of taxable wages.

e. The Commission, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review."

SECTION 5. G.S. 96-13(a) is amended by adding a new subdivision to read:

"(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claimant's monetary eligibility is based predominately on wages from part-time work.
b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.
c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service."

SECTION 6. G.S. 96-14(1d) reads as rewritten:

"(1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall serve a time certain disqualification for benefits for a period of ~~five~~ two weeks beginning the first day of the first week after the disqualifying act

occurs with respect to which week an individual files a claim for benefits. Notwithstanding the other provisions of this subdivision, leaving work because a spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work."

SECTION 7. This act is effective when it becomes law.

SENATE BILL 439:
Omnibus ESC Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 8, 2003	**Summary by:**	William R. Gilkeson
Version:	S439-CSLR-1 [v.4]		Committee Co-Counsel

SUMMARY: The PCS for Senate Bill 439 makes several changes to the unemployment laws requested by the Employment Security Commission, chiefly approval of a job search that is restricted to part-time employment for a person whose work history consists of part-time jobs. *Section 5 of bill.* ***All changes effective when the bill becomes law.***

Section 1. Health/Disability in Family. Currently, a person is disqualified from UI benefits who left work "without good cause attributable to the employer." But they aren't disqualified if they left work due solely to a disability or health condition. The law is written as if the disability or health condition must be the employee's own. The PCS, however, would remove the disqualification from benefits if the disability or health condition were that of a minor child in the employee's custody, of an aged or disabled parent of the employee, or of any member of the employee's immediate family. "Immediate family" is defined in the UI law as "wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship."

Section 2. Technical Correction. This section removes language that was inadvertently dropped several years ago.

Section 3. Broader Exemption for Domestic Violence, Sexual Offense, Stalking. Currently, a person's UI disqualification is removed if they have been given a protective order under Chapter 50B concerning domestic violence. The PCS broadens the exemption from disqualification to include a person who has qualified for the new Address Confidentiality Program in Chapter 15C or who can demonstrate domestic violence, sexual offense, or stalking through a number of means. Those means include law enforcement or court records, documentation from a domestic violence or sexual assault program or from a professional from whom the claimant has sought help.

Section 4. No Tax Refunds to Employers that Convert to Reimbursable Status. Most employers pay UI taxes based on their experience rating in the UI system. Some nonprofit employers, however, pay no taxes but reimburse the system for each tax benefit that is paid. At the request of the U.S. Department of Labor, this section provides that employers that convert from taxable to reiumbursable status will not be refunded previous balances.

Section 5. Available for Part-Time Work. One of the main elements of qualification for UI benefits is that the unemployed person must be "available for work," that is, actively willing to accept a full-time job. The PCS would provide that the qualification is met when a person is available for only part-time work under certain conditions. The conditions are that the person:

- Was working part-time during the period when the earned the wages that met their wage threshold for benefits.
- Is actively seeking the same kind of part-time work they left – under essentially the same conditions.
- Puts no other conditions on their job search and is in a job market that has a reasonable demand for part-time work.

Section 6. Moving With Spouse. Currently, a person who leaves work to move out of town with a spouse is only temporarily disqualified for UI benefits. Qualification lasts 5 weeks. The PCS would drop that qualification to 2 weeks and would provide that moving with a spouse who has been reassigned by the military is no disqualification at all.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 439 (Second Edition)

SHORT TITLE: Omnibus ESC Changes

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
REVENUES					
EXPENDITURES					
Employment Securities Commission	See Assumptions and Methodology				
POSITIONS: (cumulative)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Employment Securities Commission

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: The proposed legislation makes omnibus changes to the Employment Security laws of North Carolina. Individuals can claim unemployment benefits, if at the time of leaving work, an adequate disability or health condition existed for the employee, a minor child, an aged or disabled parent, or a disabled member of the individual's immediate family. Domestic violence program participant status is expanded, including situations where evidence exists of domestic violence as defined in the legislation. A technical change required by the US Department of Labor limits refunds upon employers transferring to reimbursement status. Unemployed individuals are not disqualified for eligibility for unemployment compensation benefits solely on the basis that they are only available for part-time work, assuming the conditions specified in the legislation are met. The proposed legislation also deems leaving work to accompany a spouse who has been reassigned, including military assignments, is good cause for leaving work and the disqualification for benefits is reduced.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 439

Short Title:	Omnibus ESC Changes.	(Public)
Sponsors:	Senators Clodfelter; and Dannelly.	
Referred to:	Judiciary I.	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 96-8(10a) reads as rewritten:

"(10a) "Undue family hardship" arises when an individual is unable to accept ~~a particular shift~~ work because the individual is unable to obtain (i) child care during that shift for a minor child who is in the legally recognized custody of the individual, (ii) elder care during that shift for an aged or disabled parent of the individual, or (iii) care for any disabled member of that individual's immediate family."

SECTION 1.(b) G.S. 96-14(1g) reads as rewritten:

"(1g) For purposes of this Chapter, separation or discharge solely due to an inability to accept work ~~during a particular shift~~ as a result of an undue family hardship shall constitute good cause for leaving work. Benefits paid on the basis of this section shall not be charged to the account of the employer."

SECTION 2. G.S. 96-9(c)(2) reads as rewritten:

"(2) Charging of benefit payments. –

a. Benefits paid shall be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12.01G. The amount so allocated shall be multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid shall be charged to

employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family ~~hardship;~~ hardship, shall not be charged to the account of an employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established

in order to provide for the waiting period required by G.S. 96-13(c).

c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(a)(3) shall not be charged to the account of the base period employer(s).

d. Any benefits paid to any claimant under the following conditions shall not be charged to the account of the base period employer(s):

1. The benefits are paid for unemployment due directly to a major natural disaster, and
2. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
3. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to the experience rating account of any employer.

2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service."

SECTION 3. G.S. 96-14(1f) reads as rewritten:

"(1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General ~~Statutes~~ Statutes, or has been granted program participant status pursuant to G.S. 15C-4, as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged."

SECTION 4. G.S. 96-9(d)(1) reads as rewritten:

"(1) a. Any nonprofit organization which becomes subject to this Chapter on or after January 1, 1972, shall pay contributions

under the provisions of this Chapter, unless it elects in accordance with this paragraph to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin within a benefit year established during the effective period of such election.

b. Any nonprofit organization which is or becomes subject to this Chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than four calendar years beginning with the date on which subjectivity begins by filing a written notice of its election with the Commission not later than 30 days immediately following the date of written notification of the determination of such subjectivity. Provided if notification is not by registered mail, the election may be made on or after January 1, 1972, within six months following the date of the written notification of the determination of such subjectivity. If such election is not made as set forth herein, no election can be made until after four calendar years have elapsed under the contributions method of payment.

c. Any nonprofit organization which makes an election in accordance with subparagraph b of this paragraph will continue after such four calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than 30 days prior to the next January 1, effective on such January 1. Provided, however, no employer granted or in reimbursement status will be allowed refund of any previous balances used in a transfer to reimbursement status.

d. Any nonprofit organization which has been paying contributions under this Chapter for a period of at least four consecutive calendar years subsequent to January 1, 1972, may elect to change to a reimbursement basis by filing with the Commission not later than 30 days prior to the next January 1 a written notice of election to become liable for payments in lieu of contributions, effective on such January 1. Such election shall not be terminable for a period of four calendar years. In the event of such an election, the account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever. Provided, however, any nonprofit employer formerly paying contributions who elects and qualifies to change to a

reimbursement basis may be relieved of the requirement to pay one percent (1%) of taxable wages as required by G.S. 96-9(d)(2)a to the following extent and upon the following conditions:

1. Any nonprofit employer which has, for the year the election will be effective, an experience rating of 1.7 or less, will have transferred from its experience rating account an amount equal to one percent (1%) of its payroll as reported for each of the four calendar quarters which constitute the election year;
2. Any nonprofit employer which has, for the year the election will be effective, an experience rating of less than 2.7 but more than 1.7, will have transferred from its experience rating account an amount equal to one-half of one percent (.5%) of its payroll as reported for each of the four calendar quarters which constitute the election year. Such employers shall make advance payments to the Commission quarterly, computed at one-half of one percent (.5%) of the taxable wages reported as provided in G.S. 96-9(d)(2)a;
3. Any nonprofit employer which has, for the year the election will become effective, an experience rating of 2.7 or more, upon electing to change to a reimbursement basis, will meet all the requirements of G.S. 96-9(d)(2)a, including making advance payments computed at one percent (1%) of taxable wages.

e. The Commission, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review."

SECTION 5. G.S. 96-13(a) is amended by adding a new subdivision to read:

"(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claim for benefits is based on part-time work.
b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service."

SECTION 6. G.S. 96-14(1d) reads as rewritten:

"(1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall serve a time certain disqualification for benefits for a period of ~~five~~ two weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits. Notwithstanding the other provisions of this subdivision, leaving work to accompany a spouse who has been reassigned from one military assignment to another shall be deemed good cause for leaving work."

SECTION 7. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

1 AM

J-1 Committee — 4-8-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeb Allen	Allen Gross
Gary Saunders	GSK
M. [illegible]	DJC
J Withrow	NC State Watch
Doris Weaver	NC CWA Political Council
Richard Westbrook	UTU
Andy Romanoff	NCLM
Jim Blackburn	Friend of Andrew McIndoe
[illegible]	NCRA
Taylor Francis	Sen. Purcell
Laura Harper	SEA NC

continued (2)

VISITOR REGISTRATION SHEET

J-1 Committee — 4-8-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	Alley Associates, Inc.
LaKhanet Taylor	NC-ESC
DCAGS	ESC
[illegible] Payne	ESC
Denise Huntley	Intern - Sen. Clodfelter
Tony Mecia	Charlotte Observer
[illegible]	[illegible]
Lucius Pullen	Attorney
Tommy Hamrick	Lobbyist
Jim Ahler	NC Assn of CPAs
Sam Johnson	Atty

continued (3)

VISITOR REGISTRATION SHEET

JT Committee — 4-8-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Evelyn Hawthorne	EHGR
Joann Stevens	nursing
Mike Okun	NC State AFL-CIO

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 8, 2003	10 minutes after session.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB 394	Equ. Dis. Claim Survive Death Spouse/Limit	Sen. Rand
•	SB 622	Electronic Signatures By Public Agencies	Sen. Reeves
•	SB 647	Limited Local Waiver of Sovereign Immunity	Sen. Gulley
•	SB-669	Civil Remedy for Animal Cruelty	Sen. Hartsell

Senator Dan Clodfelter, Chair

JUDICIARY-1 COMMITTEE

April 8, 2003 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 3:45 p.m. with thirteen members present.

SB-394 (Equ.Dis. Claim Survive Death Spouse/Limit) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained the changes to the bill. Mr. Wade Harrison, NC Bar Association spoke in favor of the changes. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-537 (Amend Public Enter. Customer Billing Privacy) was introduced by Senator Clodfelter. Bill sponsor, Senator Tony Rand explained the changes to the bill. Senator Wib Gulley moved for a Favorable Report. All members voted yes. Motion carried.

SB-647 (Limited Local Waiver of Sovereign Immunity) Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley, bill sponsor moved for adoption of the Committee Substitute. All members voted yes. Motion carried. He explained the changes to the bill. Senator's Tony Rand and Charlie Albertson had questions regarding the text of the bill. Senator Gulley answered the questions to their satisfaction. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-326 (Soliciting SUTA Dumping a Felony) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator David Hoyle explained the changes to the bill. Staff attorney, Bill Gilkeson explained the changes in more detail. Mr. Harry Payne, Chairman of the NC Employment Security Commission spoke briefly on the bill. Mr. David Clegg from the NC Employment Security Commission also spoke on the bill and answered questions asked by Senator's Wib Gulley, Charlie Albertson and Phillip Berger. Senator Patrick Ballantine had a question about language on Section A-1, Page 2, Lines 2 and 43. Senator Clodfelter stated that the bill would be displaced at this time and a Fiscal Note will be added to the bill and brought back to committee at a later date

SB-669 (Civil Remedy for Animal Cruelty) was introduced by Senator Clodfelter. He stated that the bill would be presented for discussion only, and would not voted on at this time. Staff attorney, Hal Pell explained the bill in the absence of bill sponsor, Senator Fletcher Hartsell. Ms. Bly Hall, Staff attorney with NC General Statutes Commission, Ms. Cindy Bailey, with the Durham County Animal Control spoke briefly on the bill. Senator Wib Gulley moved for an Amendment on Page 1, Lines 24 and 26. All voted yes. (See attached Amendment) Senator Clodfelter stated that an Amendment will be worked into a Committee Substitute and the bill would be displaced at this time and will be heard at a future date. (See attached Amendment).

Being no further business the meeting adjourned at 4:45 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 14, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **394** Equ. Dis. Claim Survive Death Spouse/Limit.

Draft Number:	PCS 40005
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **555** Sch Safety Officers-Students/Sex Offenses.

Draft Number:	PCS 40007
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **647** Limited Local Waiver of Sovereign Immunity.

Draft Number:	PCS 40006
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 394
PROPOSED COMMITTEE SUBSTITUTE S394-CSRU-2 [v.4]

4/7/2003 2:52:37 PM

Short Title: Equ. Dis. Claim Survive Death Spouse/Limit. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) ~~A pending action for equitable distribution shall not abate upon the death of a party.~~

(1) A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death.

(2) Any claim for equitable distribution against the estate of the deceased spouse made after the death of a party must be filed with the estate of the deceased spouse in accordance with Article 19 of Chapter 28A of the General Statutes, or if no estate administration is opened, an action for equitable distribution must be filed within six months of the date of death.

(3) Any claim for equitable distribution against the surviving spouse made by the estate of the deceased spouse must be filed with the district court within six months of the date of death of the deceased spouse or be forever barred.

(4) The proper forum for disputed claims under this subsection shall be the district court.

(5) An action brought under this subsection shall be an action to determine what constitutes an asset of the deceased spouse's estate and shall constitute a claim of the seventh class under G.S. 28A-19-6."

SECTION 2. The catch line for G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital and divisible ~~property upon divorce.~~property.**"

SECTION 3. Article 19 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-19-19. Claims for equitable distribution.**

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of martial or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at any time, subject to the provisions of G.S. 28A-19-16, file an action with the court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20."

SECTION 4. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

SENATE BILL 394: Equitable Distribution Claim Survive Death Spouse/Limit.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Rand
Date:	April 8, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S394-CSRU-2 [v.4]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 394 would amend the equitable distribution and estate administration laws to allow a claim to be filed after the death of one of the spouses where the parties had lived separate and apart prior to death, even if an action for equitable distribution had not been filed prior to death.***

CURRENT LAW: Currently G.S. 50-20(l) allows a claim for equitable distribution that is pending at the time of the death of one spouse to continue not withstanding the death.

BILL ANALYSIS: Section 1 of the Proposed Committee Substitute for Senate Bill 394 would extend the current law to also allow an action for equitable distribution to be filed after the death of a spouse where the parties were legally separated at the time of death. The bill requires that a claim for equitable distribution made after death be subject to the same filing and notice requirements with the personal representative of the deceased spouse's estate as required by all other creditors of the estate. If an estate is not opened, an action must be brought within 6 months of death. Equitable distribution actions brought by the estate of the deceased spouse must be brought within 6 months of the date of death. The district court, where all other equitable distribution claims are heard, will also hear claims where one of the spouses is deceased. These actions will be considered actions to determine assets of the estate and are treated for payment purposes as all other general claims against the estate.

Under Article 19 of Chapter 28A of the General Statutes, a creditor has to file a notice of claim with the personal representative within 90 days of the date the notice to creditors is delivered or published. If the personal representative rejects the claim, the surviving spouse has to bring an action against the estate within three months after the date of the notice of the rejectment.

Section 2 changes the catchline for the section being amended in Section 1.

Section 3 adds a new section to the estate administration law to modify the normal estate administration law as it relates to equitable distribution matters. G.S. 28A-19-5 (Contingent claims) and G.S. 28A-19-7 (Satisfaction of claims other than by payment) do not apply to these actions. The personal representative is permitted to negotiate a settlement of the equitable distribution claim on behalf of the estate. Unless all the parties agree to another dispute resolution process, the personal representative may bring an action for equitable distribution in accordance with the requirements and limitations set forth in Section 1 of the bill.

EFFECTIVE DATE: The bill is effective when it becomes law, and applies to actions pending or filed on or after that date.

S394-SMRU-V3-002

§ 28A-19-1. Manner of presentation of claims.

(a) A claim against a decedent's estate must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the claimant; and must be presented by one of the following methods:

(1) By delivery in person or by mail to the personal representative, collector or clerk of superior court. Such claim will be deemed to have been presented from the time of such delivery.

(2) By mailing, registered or certified mail, return receipt requested, to the personal representative or collector at the address set out in the general notice to creditors. Such claim will be deemed to have been presented from the time when the return receipt is signed by the personal representative, collector, or his agent, or is refused by the personal representative, collector, or his agent.

(3) By delivery to the clerk of court of the county in which the estate is pending, which notice shall be filed in the appropriate estate file and copy mailed first class by the clerk of superior court at the expense of the claimant to the personal representative, collector, or his agent. The claim will be deemed to have been presented from the time of delivery to the clerk of court.

(b) In an action commenced after the death of the decedent against his personal representative or collector as such, the commencement of the action in the court in which such personal representative or collector qualified will constitute the presentation of a claim and no further presentation is necessary. In an action filed in any other court such claim will be deemed to have been presented at the time of the completion of service of process on such personal representative or collector.

(c) In an action pending against the decedent at the time of his death, which action survives at law, the substitution of the personal representative or collector for the decedent or motion therefor will constitute the presentation of a claim and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor. (1973, c. 1329, s. 3; 1977, c. 446, s. 1; 1985, c. 645, s. 1.)

§ 28A-19-3. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, except contingent claims based on any warranty made in connection with the conveyance of real estate and claims of the United States and tax claims of the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not presented to the personal representative or collector pursuant to G.S. 28A-19-1 by the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a) or in those cases requiring the delivery or mailing of notice as provided for in G.S. 28A-14-1(b), within 90 days after the date of the delivery or mailing of the notice if the expiration of said 90-day period is later than the date specified in the general notice to creditors, are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent. Provided further, if the expiration of said 90-day period is later than the date specified in the general notice to creditors, the notice delivered or mailed to each creditor, if any, shall be accompanied by a statement which specifies the deadline for filing the claim of the affected creditor.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, except claims of the United States and tax claims of the State of North Carolina and subdivisions thereof whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector as follows:

(1) With respect to any claim based on a contract with the personal representative or collector, within six months after the date on which performance by the personal representative or collector is due;

(2) With respect to any claim other than a claim based on a contract with the personal representative or collector, within six months after the date on which the claim arises.

(c) Except as otherwise provided by subsection (f) of this section, no claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim is presented within the period provided by subsection (a) hereof.

(d) All claims of creditors upon whom there has been personal service of notice as provided in G.S. 28A-14-3 are forever barred unless presented to the personal representative or collector within the time and manner set out in this Article.

(e) Except as otherwise provided by subsection (f) of this section, unless a claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding pending against a decedent at the time of his death and surviving under G.S. 28A-18-1 within the time provided by subsection (a) of this section, no recovery may be had upon any judgment obtained in any such action or proceeding against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent.

(f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in any event, be barred if the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within three years after the death of the decedent.

(g) Nothing in this section affects or prevents any action or proceeding to enforce any mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon any property of the decedent's estate, but no deficiency judgment will be allowed if the provisions of this section are not complied with.

(h) The word "claim" as used in this section does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees.

(i) Nothing in this section shall bar:

(1) Any claim alleging the liability of the decedent or personal representative; or

(2) Any proceeding or action to establish the liability of the decedent or personal representative; or

(3) The recovery on any judgment against the decedent or personal representative

to the extent that the decedent or personal representative is protected by insurance coverage with respect to such claim, proceeding or judgment or where there is underinsured or uninsured motorist coverage that might extend to such claim, proceeding, or judgment.

§ 28A-19-6. Order of payment of claims.

After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of two thousand five hundred dollars ($2,500). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of two thousand five hundred dollars ($2,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. All dues, taxes, and other claims with preference under the laws of the United States.

Fourth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

Sixth class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Seventh class. All other claims.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 394

Short Title:	Equ. Dis. Claim Survive Death Spouse/Limit.	(Public)
Sponsors:	Senators Rand; and Clodfelter.	
Referred to:	Judiciary I.	

March 12, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS FILED WITHIN SIX MONTHS OF THE DATE OF DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) A ~~pending action~~claim for equitable distribution ~~shall not abate upon the death of a party.~~survives the death of a spouse so long as the parties are living separate and apart at the time of death. Any claim for equitable distribution made after the death of a party must be filed within six months of the date of death."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 537

Short Title:	Amend Public Enter. Customer Billing Privacy.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 26, 2003

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE AIRPORTS FROM THE PUBLIC ENTERPRISE BILLING INFORMATION PRIVACY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.1 reads as rewritten:

"**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in

connection with the ownership or operation of a public enterprise, excluding airports, is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

~~(i)~~ (1) ~~that~~ That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

~~(ii)~~(2) ~~that~~ That is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

~~(iii)~~(3) ~~that~~ That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311, excluding subdivision (9), and G.S. 153A-274, excluding subdivision (4), or other public entity providing utility services, excluding airports, relating to services it provides or will provide to the customer."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 647
PROPOSED COMMITTEE SUBSTITUTE S647-CSRU-8 [v.2]

4/4/2003 9:59:13 PM

Short Title: Self-Insured Localities (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE STATEWIDE AN ACT CURRENTLY APPLICABLE TO MECKLENBURG AND CATAWBA COUNTIES AND CHARLOTTE AND RALEIGH THAT DEEMS THE CREATION OF A SELF-FUNDED RISK PROGRAM AS THE PURCHASE OF INSURANCE FOR THE PURPOSE OF WAIVING GOVERNMENTAL IMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-485(a) reads as rewritten:

"(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

SECTION 2. G.S. 153A-435(a) reads as rewritten:

"(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to

person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the county or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county board of commissioners may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the county's governmental immunity only to the extent specified in the board's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

SECTION 3. Section 1 of S.L. 1988-980 and Section 2 of S.L. 1998-200, as amended by S.L. 2002-79, are repealed, but any resolution adopted under those sections and still effective on the effective date of this act shall continue to be valid as if they were adopted under G.S. 153A-435(a) or G.S. 160A-485(a) as amended by this act.

SECTION 4. This act is effective when it becomes law.

SENATE BILL 647:
Self-Insured Localities.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	April 8, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S647-CSRU-8[v.2]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 647 would authorize cities and counties to waive sovereign immunity from liability claims through the creation of self-funded reserve funds in lieu of waiving sovereign immunity by the purchase of insurance.***

CURRENT LAW: Cities and counties have sovereign immunity from liability claims arising out of the performance of governmental functions unless that immunity is waived by the purchase of liability insurance or participation in a local government risk pool. Sovereign immunity is waived to the extent of insurance coverage. Mecklenburg and Catawba Counties and the Cities of Charlotte and Raleigh have authority to waive sovereign immunity by the creation of a self-funded reserve. The terms and conditions of the funded reserve act as liability insurance for the purpose of waiving sovereign immunity.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 647 would authorize cities and counties to waive sovereign immunity for negligence claims through the creation of a funded reserve as is currently permitted for Charlotte and Raleigh. The reserve must be created by resolution adopted by the city council or the county commissioners and must set out the limit of liability that is further limited by the amount of funds available in the funded reserve.

Section 1 of the bill grants this authority to cities. Section 2 grants this authority to counties.

Section 3 repeals the local acts that apply to Catawba and Mecklenburg Counties and to Charlotte and Raleigh but allows their existing resolutions to continue in effect under this new law.

BACKGROUND: Larger local governments have found that they can self administer many of their risks through in-house personnel at a lower cost than going through an insurance company that adds its administrative cost to the risk reserve.

EFFECTIVE DATE: The bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 647

Short Title:	Limited Local Waiver of Sovereign Immunity.	(Public)
Sponsors:	Senator Gulley.	
Referred to:	Judiciary I.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO, BY RESOLUTION, CREATE A SELF-FUNDED RISK PROGRAM AND THEREBY WAIVE GOVERNMENTAL IMMUNITY FROM CIVIL LIABILITY IN TORT TO THE EXTENT THAT FUNDS ARE AVAILABLE IN THE FUNDED RESERVE FOR THE PAYMENT OF CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-485(a) reads as rewritten:

"(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

SECTION 2. G.S. 153A-435(a) reads as rewritten:

"(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused

by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the county or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county board of commissioners may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the county's governmental immunity only to the extent specified in the board's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 326

Short Title:	Soliciting SUTA Dumping a Felony.	(Public)
Sponsors:	Senators Hoyle and Clodfelter.	
Referred to:	Judiciary I.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SOLICITING A VIOLATION OF OR CONSPIRING TO VIOLATE THE LAW MAKING IT A MISDEMEANOR FOR EMPLOYING UNITS TO MAKE FALSE STATEMENTS TO THE EMPLOYMENT SECURITY COMMISSION IS GUILTY OF A FELONY, SO AS TO DETER THE PRACTICE OF STATE EMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-18(b) reads as rewritten:

"(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. Notwithstanding G.S. 14-2.6(b), any person who solicits any person to violate this subsection is guilty of a Class H felony. Any person, other than the employing unit or an officer or employee of that unit, who conspires to violate this subsection, is guilty of a Class H felony."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 669

Short Title:	Civil Remedy for Animal Cruelty.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE CIVIL REMEDY FOR PROTECTION OF ANIMALS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 19A of the General Statutes reads as rewritten:

"Article 1.

"Civil Remedy for Protection of Animals.

"**§ 19A-1. Definitions.**

The following definitions apply in this Article:

(1) The ~~terms~~ term "animals" ~~and "dumb animals" include every useful living creature.~~includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.

(2) The terms "cruelty" and "cruel treatment" include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or ~~permitted; but these terms shall not be construed to include lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry.~~ permitted.

~~(3) The term "person" includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals.~~

"**§ 19A-1.1. Prohibition.**

No person shall engage in cruelty to or cruel treatment of any animal.

."**§ 19A-1.2. Exemptions.**

This Article shall not apply to the following activities conducted in compliance with commonly accepted practices:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(3) Activities conducted for the primary purposes of providing food for human or animal consumption.

(4) Activities conducted for veterinary purposes by or under the supervision of licensed veterinarians.

(5) The lawful destruction of any animal for the purposes of protecting the public, other animals, or the public health.

(6) Lawful activities for sport.

"**§ 19A-2. Purpose.**

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any ~~"person" as hereinbefore defined even though such~~ person even though the person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal.

"**§ 19A-3. ~~Preliminary injunction.~~ Temporary restraining order.**

Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, in ~~his~~ the judge's discretion, issue a ~~preliminary injunction~~ temporary restraining order in accordance with the procedures set forth in G.S. 1A-1, Rule 65. Every such ~~preliminary injunction,~~ temporary restraining order, if the ~~complainant~~ plaintiff so requests, may give the ~~complainant~~ plaintiff the right to provide suitable care for the animal. ~~If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the complainant to take possession of the animal.~~

"**§ 19A-3.1. Preliminary injunction.**

If the court finds, after a hearing pursuant to G.S. 1A-1, Rule 65, that the cruelty or cruel treatment alleged would not immediately be terminated by issuance of a preliminary injunction that leaves the animal in possession of the defendant, the court may issue a preliminary injunction transferring possession and custody of the animal to the plaintiff or to a third party.

"**§ 19A-4. Permanent injunction.**

In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a

jury, and upon hearing such evidence as may be presented, shall enter orders as ~~he~~ the court deems appropriate, including a permanent injunction ~~or final determination of the animal's custody.~~ and dismissal of the action along with dissolution of any temporary injunction that had been issued. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 669

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S669-ARK-4 [v.1]

Date 4-8 ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator Gulley

moves to amend the bill on page 1, line 24-26, by deleting the following:

" ~~(3) The term "person" includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals.~~",

And substituting the following:

"(3) The term "person" ~~includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals.~~has the same meaning as in G.S. 12-3.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 669:
Civil Remedy for Animal Cruelty.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Hartsell
Date:	April 8, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Committee Counsel

SUMMARY: ***This act would amend the Article that provides a civil remedy for the protection of animals, including: redefining "animals"; stating the prohibition against cruelty and the exemptions to the Article; clarifying that a "plaintiff" may seek a temporary restraining order; and authorizing a court to terminate a defendant's ownership and right to possession in certain circumstances. The act is effective when it becomes law.***

BILL ANALYSIS:

Section 1: In this section:

- The definition of animals would be rewritten to delete "dumb animals" and define animals as those vertebrates in the scientific classes Amphibia, Reptilia, Aves, and Mammalia. Human beings are excluded.
- A new section (G.S. 19A-1.1) is added, specifically stating that no person shall engage in cruelty to or cruel treatment of animals.
- The exemptions from the Article, currently in G.S. 19A-1, are moved to a new section, G.S. 19A-1.2. The exemptions include: animals lawfully taken, activities for biomedical research, activities conducted for providing food for human or animal consumption, veterinary activities, lawful destruction for public health reasons, and lawful activities for sport. The amendment would conform this section to the provisions of G.S. 14-360(c), Cruelty to Animals exemptions.
- The term "person" is defined as provided in the General Statutes (bodies politic and corporate, as well as individuals).
- A provision is added which clarifies that a temporary restraining order may be issued. The term "complainant" is changed to "plaintiff." The provision for a preliminary injunction is moved to a new section, G.S. 19A-3.1.
- A new provision is added to the section that provides for a permanent injunction. If a permanent injunction would not, in the court's discretion, terminate the potential for a substantial risk of further inhumane treatment of the animal by the defendant, then the court may terminate the defendant's ownership and right of possession. The court may, under these circumstances, transfer ownership and right of possession to the plaintiff.

Section 2. The act is effective when it becomes law.

BACKGROUND: This act is a recommendation by the General Statutes Commission.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: April 7, 2003

RE: Senate Bill 669 (Civil Remedy for Animal Cruelty)

General Comments

This bill revises Article 1 of Chapter 19A of the General Statutes (Civil Remedy for Protection of Animals). The revision is intended to clarify and modernize the article so that it can be effectively used to serve its original purpose. The article currently provides a definition of "cruelty" and "cruel treatment" of animals and also provides that any "person" may bring an action under the article for the protection and humane treatment of animals. Possible remedies include an injunction determining the animal's "custody."

The General Statutes Commission was asked to clarify that "person" includes counties and municipalities and that "custody" includes the ability to euthanize an animal or make other permanent dispositions of that animal. The request came as a result of a number of recent instances in which dogs, usually pit bulls, were seized pursuant to a dog fighting prosecution under G.S. 14-362.2 and were required to be held by the local animal shelter until the defendant's criminal case was completed, when G.S. 14-363.2 allows the animals to be confiscated from the defendant. Because dog fighting is now a felony, prosecutions are typically taking longer. Shelters must give space to these dogs, which are very rarely adoptable, and have less space to accommodate other, more adoptable dogs. The result is that potentially adoptable animals must be euthanized for lack of the space that is being taken up by the dogs that were kept for fighting. At present, a county or municipality or animal protection society can obtain an order under Article 1 of Chapter 19A more quickly than under G.S. 14-363.2.

Specific Comments

The bill makes the following specific amendments:

(1) G.S. 19A-1(1): The definition of "animals" is conformed to the one in G.S. 14-360 (the criminal statute on cruelty to animals).

(2) G.S. 19A-1(2): The list of exemptions in the definition of "cruelty" and "cruel treatment" is moved to a new G.S. 19A-1.2.

(3) G.S. 19A-1(3) and G.S. 19A-2: These sections are amended to utilize the definition of "person" in G.S. 12-3 (rules for construction of statutes), which definition is believed to be broad enough to include State agencies, counties, and municipalities as well as nonprofit corporations, such as a society for the prevention of cruelty to animals.

(4) G.S. 19A-1.1: This section imposes a duty to refrain from cruelty to or cruel treatment of animals, which is implicit in the current law but not explicitly stated.

(5) G.S. 19A-1.2: This section carries forward the list of exemptions currently in G.S. 19A-1(2), modified in part to conform to the equivalent list in G.S. 14-360, if the listed activity is conducted in compliance with commonly accepted practices.

(6) G.S. 19A-3, 19A-3.1, and 19A-4: G.S. 19A-3 and G.S. 19A-4 are restructured to better conform to Rule 65 of the Rules of Civil Procedure. G.S. 19A-4 is amended to clarify that the final order may change the animal's ownership and to state the standard that the plaintiff must meet before such a change can be ordered.

VISITOR REGISTRATION SHEET — 4:45 PM

J-1 Committee — 4-8-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dallas Baker	Intern – Sen. Gulley
Mike Carey	NC Hospitals
Jere Royall	NC Family Policy Council
Bob Hall	Democracy North Carolina
Jim Blackburn	NC Association of County Commrs
Patricia Roesler	NC Association of County Commrs
[signature]	GSK
Tony Mecia	Charlotte Observer
Ken Melton	Alley Associates, Inc.
Fran Cockman	NC state watch
Wade Harrison	N.C.B.A.
ALLAN HEAD	NC Bar. Assoc.

(2)

VISITOR REGISTRATION SHEET

J-1 — 4-8-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cynthia N. Bailey	Durham County Government 201 E. Club Blvd Durham NC 27704
Mollie Rhodes	NC Veterinary Med. Assoc. 138 Spring Ave. Fuquay-Varina, NC 27526
Jimmy Randolph	NC Poultry Fed. 4020 Barrett Raleigh, NC 27609
Henry Jones	Attorney – Raleigh
Jim Fuller	NC. Assn. of CPAs
Sam Johnson	Atty
Seth Allen	Allen Associates
Tommy Hunt	Harnett County
Philip Hall	General Statutes Commission
Floyd Lewis	General Statutes Commission
Lockhart Taylor	NC-ESC

(3)

pm

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-8-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Clegg	NC-ESC
Sam Payne	NC ESC
Denise Huntley	sen. Clodfelter's intern
Bellamy	NCATL
Bill Scoggin	KCLH
Carol Lamb	EGLS
DR Benson	TCG
M. Lucas	GSK

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 10, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-555	Sch Safety Officers-Students/Sex Offenses	Sen. Stevens
•	SB-622	Electronic Signatures By Public Agencies	Sen. Reeves
•	SB-630	Clarify Definition of Protective Order	Sen. Clodfelter
•	SB-786	State Institution Resident Damage Claims	Sen. Reeves
•	SB-912	Sexual Battery	Sen. Clodfelter
•	SB-916	Create Civil No-Contact Protective Orders	Sen. Clodfelter
•	SB-921	Workplace Violence	Sen. Rand
•	SB-1011	Health Care Provider Liens	Sen. Berger

Senator Dan Clodfelter, Chair

JUDICIARY-1 COMMITTEE

April 10, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:02 a.m. with twelve members present. He introduced Pages, Carl Burchette from Charlotte, NC and Benjamin Rogers from Durham, NC.

HB-549 (Establish Election Fund to Implement HAVA) was introduced by Senator Clodfelter. Staff attorney, Bill Gilkeson explained the bill in the absence of bill sponsors, Representative Mickey Michaux and Paul Stam. No discussion. Senator Phillip Berger moved for a Favorable Report. Senator Jeanne Lucas seconded the motion. All voted yes. Motion carried.

SB-786 (State Institution Resident Damage Claim) was introduced by Senator Clodfelter. Mr. Don Wells from the NC Department of Health & Human Services spoke in favor of the bill, explaining parts of the bill. Senator Ham Horton had a question on the bill. Staff attorney, Bill Gilkeson answered the question. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

SB 555 (Sch Safety Officers-Students/Sex Offenses) Committee Substitute was introduced by Senator Clodfelter. Senator Bob Carpenter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Richard Stevens explained the bill. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

SB-622 (Electronic Signatures By Public Agencies) Committee Substitute was introduced by Senator Clodfelter. Senator Steve Metcalf moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Mr. Scott Templeton, Deputy Secretary from the Secretary of State's office explained the bill in the absence of bill sponsor, Senator Eric Reeves and spoke in favor of the bill. Senator Clodfelter stated that the bill would not be voted on at this time and will be brought back to committee at a later date. Mr. Lee Mandell from the NC League of Municipalities spoke briefly in favor of the bill.

SB 1011 (Health Care Provider Liens) was introduced by Senator Clodfelter. Senator Phillip Berger, bill sponsor explained the bill. Senator's R.C. Soles, Tony Rand, Dan Clodfelter had questions on the bill. Senator Berger answered the questions. Senator

Clodfelter stated that the bill would be displaced at this time and would be brought back to committee at a later date.

SB-630 (Clarify Definition of Protective Order) was introduced by Vice Chair, Senator R.C. Soles. Bill sponsor, Senator Dan Clodfelter explained the bill. See Bill Summary for further information. Ms. Leanne Winner from the NC School Board Association spoke in favor of the bill. No discussion. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

SB-912 (Sexual Battery) Committee Substitute was introduced by Vice Chair, Senator R.C. Soles. Senator Dan Clodfelter explained the bill and asked for discussion only. He stated that the bill would not be voted on at this time. Senator's R.C. Soles, Tony Rand, Jeanne Lucas, Steve Metcalf and Vernon Malone had questions. Staff attorney, Hal Pell answered the questions. No further discussion.

SB-916 (Create Civil No-Contact Protective Orders) was introduced by Vice Chair, Senator R.C. Soles. Bill sponsor, Senator Dan Clodfelter explained the bill and asked for discussion. No discussion. He stated the bill would be displaced at this time and held for further study.

SB 921 (Workplace Violence) was introduced by Senator Clodfelter. Bill sponsor, Senator Tony Rand explained the bill. Senator's Linda Garrou, and R.C. Soles had questions. Senator Rand answered the questions. Ms. Leanne Winner spoke in favor of the bill. Bruce Thompson from NC Society of Resource Management spoke briefly. No action was taken,

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, April 10, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **630** Clarify Definition of Protective Order.
Sequential Referral: None
Recommended Referral: None

S.B. **786** State Institution Resident Damage Claims.
Sequential Referral: None
Recommended Referral: None

H.B. **549** Establish Election Fund to Implement HAVA.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 549

Short Title:	Establish Election Fund to Implement HAVA.	(Public)
Sponsors:	Representatives Michaux and Stam (Primary Sponsors).	
Referred to:	Election Law and Campaign Finance Reform.	

March 19, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE ELECTION FUND REQUIRED BY THE HELP AMERICA VOTE ACT OF 2002 (HAVA) AS A CONDITION FOR RECEIVING FEDERAL FUNDS UNDER THAT ACT..

Whereas, in 2002, Congress enacted the Help America Vote Act of 2002 (HAVA), Public Law 107-252, entitled an act to establish a program to provide funds to states to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and programs, to establish minimum election administration standards for states and units of local government with responsibility for the administration of federal elections, and for other purposes; and has appropriated over thirty-one million dollars ($31,000,000) to the State of North Carolina for the current fiscal year; and

Whereas, Section 254(b) of HAVA requires each state receiving funds to establish a fund to receive and disburse these funds; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA.

SECTION 2. G.S. 147-69.2(a) is amended by adding a new subdivision to read:

"(17d) The Election Fund."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 786

Short Title:	State Institution Resident Damage Claims.	(Public)
Sponsors:	Senator Reeves.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHEN THE PROPERTY OF A RESIDENT OF A STATE INSTITUTION UNDER THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IS LOST, DESTROYED, OR OTHERWISE DAMAGED THROUGH NEGLIGENT HANDLING BY THE INSTITUTION, THE INSTITUTION MAY MAKE DIRECT PAYMENT OR PROVIDE REPLACEMENT OF THE ITEM TO THE RESIDENT WITHOUT RECOURSE TO THE TORT CLAIMS PROCESS IF THE AMOUNT OF DAMAGES IS LESS THAN FIVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-285.1. Settlement of small claims against institutions of the Department of Health and Human Services.**

When the property of a resident of a State institution under the Department of Health and Human Services is lost, destroyed, or otherwise damaged through negligent handling by the institution, and the amount of damages is less than five hundred dollars ($500.00), the institution may make direct payment or provide replacement of the item to the resident without recourse to the procedures otherwise provided by this Article."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 555

Short Title:	Sch Safety Officers-Students/Sex Offenses.	(Public)
Sponsors:	Senators Stevens; Apodaca, Berger, Bingham, Blake, Carrington, Clodfelter, Forrester, Foxx, Garwood, Hartsell, Horton, Malone, Moore, Pittenger, Queen, Rand, Reeves, Rucho, Shubert, Smith, and Tillman.	
Referred to:	Judiciary I.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT IT IS A FELONY FOR A SCHOOL SAFETY OFFICER TO HAVE SEXUAL CONTACT OR TAKE INDECENT LIBERTIES WITH A STUDENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.7(b) reads as rewritten:

"(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the ~~school personnel~~ defendant is ~~employed~~ employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d)."

SECTION 2. G.S. 14-202.4 reads as rewritten:

"**§ 14-202.4. Taking indecent liberties with a student.**

(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at

any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. The term "same school" means a school at which the student is enrolled and the ~~school personnel~~ defendant is ~~employed~~ employed, assigned, or volunteers. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 622
PROPOSED COMMITTEE SUBSTITUTE S622-CSRR-5 [v.2]

4/10/2003 9:29:51 AM

Short Title: Promote E-Commerce & E-Government. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE E-COMMERCE AND E-GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58.4 reads as rewritten:

"**§ 66-58.4. Use of electronic signatures.**

~~(a)~~ All public agencies may accept electronic ~~signatures.~~signatures pursuant to this Article, pursuant to Article 40 of this Chapter (the Uniform Electronic Transactions Act), or pursuant to other law.

~~(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.~~"

SECTION 2. G.S. 66-58.5 reads as rewritten:

"**§ 66-58.5. Validity of electronic signatures.**

(a) An electronic signature contained in a transaction undertaken pursuant to this Article between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

a. It is unique to the person using it;

b. It is capable of certification;

c. It is under sole control of the person using it;

d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction undertaken pursuant to this Article between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

(c) This Article does not affect the validity, presumptions relating to, or burdens of proof regarding an electronic signature that is accepted pursuant to Article 40 of this Chapter or other law."

SECTION 3. G.S.55-16-22 reads as rewritten:

"**§ 55-16-22. Annual report.**

(a) Except as provided in subsections (a1) and (a2) of this section, each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver an annual report to the Secretary of ~~Revenue.~~Revenue in paper form, or in the alternative, directly to the Secretary of State in electronic form as prescribed by the Secretary of State under this section.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The Secretary of State shall prescribe the form needed to file an annual report electronically and shall provide this form by electronic means. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names, titles, and business addresses of its principal officers.

(4a) Repealed by Session Laws 1997-475, s. 6.1.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) An annual report ~~required~~ eligible to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. At the option of the filer, an annual report may be filed directly with the Secretary of State in electronic form. An annual report required to be delivered to the Secretary of State is

due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

SECTION 4. The Department of the Secretary of State may study and make recommendations to the 2004 Regular Session of the 2003 General Assembly regarding what changes are desirable to the Notary Public Act, Chapter 10A of the General Statutes, to further facilitate electronic notarization and make other changes to that Chapter.

SECTION 5.(a) This act is enacted or adopted after the date of the enactment of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., and hereby makes specific reference as required by that law.

SECTION 5.(b) This act is effective when it becomes law, with Sections 1, 2, and 3 applying to all filings made on or after that date.

SENATE BILL 622:
Promote E-Commerce and E-Government.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Reeves
Date:	April 10, 2003	**Summary by:**	William R. Gilkeson
Version:	S622-CSRR-5 [v.2]		Committee Co-Counsel

SUMMARY: ***The PCS for Senate Bill 622 blends the provisions of 3 successive pieces of legislation to make clear that all electronic signatures created pursuant to law may be accepted by State agencies, even those that require attestation by a notary.*** *Section 1 of the bill.* ***The PCS would also allow a corporation's annual report to be filed with the Secretary of State electronically.*** *Section 2 of the bill.* ***Effective when becomes law; applies to filings made on or after that date.***

CURRENT LAW: In 1998 the General Assembly enacted the **Electronic Commerce Act**, to facilitate electronic commerce with public agencies and to regulate the use of electronic signatures when used in commerce with public agencies. *Article 11A of G.S. Chapter 66.* In the Electronic Commerce Act, an "electronic signature" is defined as "any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature." *G.S. 66-58.2(2).* A "transaction" is defined as "an electronic transmission between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents." *G.S. 66-58.2(6).* The Electronic Commerce Act provides generally that all public agencies may accept electronic signatures, but does not permit electronic signatures where the signature requires attestation by a notary.

In 2000 the General Assembly enacted the **Uniform Electronic Transactions Act (UETA)**, an act adopted by more than half the states and intended to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce in both the public and private context. *Article 40 of Chapter 66.* UETA covers some of the same territory as the Electronic Commerce Act, but has a more expansive definition of "electronic signature" ("an electronic sound, symbol, or process attached to, or logically associated with, a record and executed or adopted with the intent to sign the record"). UETA specifically permits electronic signatures in notarized documents. *G.S. 66-321.*

Also in 2000, Congress passed the **Electronic Signatures in Global and National Commerce Act (E-SIGN)**, which covered some of the same territory. In an intricate interplay of federal and State law, E-SIGN allowed some State law to prevail in cases involving UETA. UETA permits some State acts later than the passage of E-SIGN only if the State act "makes specific reference to this Act." *15 U.S.C. § 7002(a).*

BILL ANALYSIS:

Blending the Laws. The PCS for SB 622 amends a provision of the Electronic Commerce Act to make clear that electronic signatures may be accepted by State agencies as long as the electronic signatures were pursuant to some law. *Section 1.* The PCS also amends the Electronic Commerce Act to provide that it does not affect the validity, presumptions, or burdens of proof of UETA or other law. *Section 2.*

Notarization. The bill removes from the Electronic Commerce Act the prohibition on electronic signatures where notarization is required, making that Act consistent with UETA. *Section 1.* The PCS also authorizes the Secretary of State to study and make recommendations to the 2004 Short Session about further changes that might be made in the Notary Public Act to facilitate electronic notarization. *Section 4.*

Electronic Filing of Annual Reports by Corporations. The PCS allows a corporation to file its annual report electronically. *Section 3.* This is already possible for some other business entities.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1011

Short Title:	Health Care Provider Liens.	(Public)
Sponsors:	Senator Berger.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF HEALTH CARE PROVIDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44-50 reads as rewritten:

"**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.**

(a) A lien ~~as provided~~ under G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney represents the injured person, the lien is perfected as provided under G.S. 44-49. Before their disbursement, any person that receives those funds shall retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services, after having received notice of those claims. Evidence as to the amount of the charges shall be competent in the trial of the action. Nothing in this section or in G.S. 44-49 shall ~~be construed so as to~~ interfere with any amount due for attorney's services. The lien provided for shall ~~in no case,~~ not, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered.

(b) The funds subject to liens under this Article shall be distributed to each health care provider that holds a lien according to that provider's pro rata share of these funds. If the injured person is represented by an attorney, the pro rata share of these funds shall be based on the remaining balance due of the itemized statements furnished to the attorney under G.S. 44-49(b) as the provider's charges to the injured person for medical supplies or services. Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to the extent that the instructions conflict with the requirements of this Article."

SECTION 2. Article 9 of Chapter 44 of the General Statutes is amended by adding a new section to read:

"**§ 44-50.1. Accounting of disbursements; attorney's fees to enforce lien rights.**

(a) Any health care provider who holds a lien under this Article and who receives payment in an amount less than the amount claimed by the provider as due and payable shall be entitled, upon the provider's request, to receive from the person who under G.S. 44-50 received any funds for distribution, a written accounting of all settlement or judgment proceeds distributed. The accounting shall include the total amount recovered from the settlement or judgment, the amount of attorneys' fees, the amount of any costs associated with the negotiation or litigation of the claims that are paid from the total amount recovered, the amounts claimed by all other health care providers, the amounts actually distributed to all other health care providers, and the amount received by the injured party. If the person distributing settlement or judgment proceeds is an attorney, the accounting required by this section is not a breach of the attorney-client privilege.

(b) In any action brought by a health care provider to enforce its lien rights under this Article, the presiding judge may award reasonable attorney's fees to be taxed as part of court costs and payable to the prevailing party."

SECTION 3. This act is effective when it becomes law and applies to any liens perfected on or after that date.

SENATE BILL 1011:
Health Care Provider Liens.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Berger
Date:	April 10, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 1011 would give addition direction to persons in charge of distributing money recovered in damages for personal injury. It would require that where more than one health care provider holds a lien on the funds, the distributor would parcel out the funds to each health care provider according to that provider's pro rata share of the funds. Effective when the bill becomes law; applies to liens perfected on or after that date.

CURRENT LAW: G.S. Chapter 44 sets up a system of liens, including liens for health care providers against damages in personal injury lawsuits. *Article 9 of Ch. 44.* For a health care provider's lien to be valid in a case, the provider must give to the attorney for the injured person an itemized statement of costs incurred and other records. *G.S. 44-49, copied on back of this page.* The attorney for the injured party (or some other designated person) is directed to distribute the money to the lienholders. *G.S. 44-50, amended in bill.*

BILL ANALYSIS: House Bill 1011 would provide that the person distributing money to the health care lienholders must do so to each according to that lienholder's pro rata share of the funds. That pro rata share is to be based on the itemized statements the lienholder provided under G.S. 44-49 to the injured person's attorney. *Section 1 of the bill.*

The bill also would provide that if a health care lienholder disputes the amount distributed from the damages, that lienholder shall be entitled to a detailed written accounting of all judgment or settlement proceeds distributed. If the person doing the distributing is an attorney, that accounting is not a breach of attorney-client privilege. *Section 2.*

Finally, the bill states that a judge has the authority to grant attorney's fees to a health care provider who litigates to enforce lien rights. Those attorney's fees would be taxes as part of court costs and paid to the prevailing attorney. *Section 2.*

§ 44-49. Lien created; applicable to persons non sui juris.

(a) From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this State. This lien is in favor of any person, corporation, State entity, municipal corporation or county to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services rendered in connection with the injury in compensation for which the damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, the liens shall attach to the sum recovered as fully as if the person were sui juris.

(b) Notwithstanding subsection (a) of this section, no lien provided for under subsection (a) of this section is valid with respect to any claims whatsoever unless the physician, dentist, nurse, hospital, corporation, or other person entitled to the lien furnishes, without charge to the attorney as a condition precedent to the creation of the lien, upon request to the attorney representing the person in whose behalf the claim for personal injury is made, an itemized statement, hospital record, or medical report for the use of the attorney in the negotiation, settlement, or trial of the claim arising by reason of the personal injury, and a written notice to the attorney of the lien claimed.

(c) No action shall lie against any clerk of court or any surety on any clerk's bond to recover any claims based upon any lien or liens created under subsection (a) of this section when recovery has been had by the person injured, and no claims against the recovery were filed with the clerk by any person or corporation, and the clerk has otherwise disbursed according to law the money recovered in the action for personal injuries. (1935, c. 121, s. 1; 1947, c. 1027; 1959, c. 800, s. 1; 1967, c. 1204, s. 1; 1969, c. 450, s. 1; 2001-377, s. 1; 2001-487, s. 59.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 630

Short Title:	Clarify Definition of Protective Order.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF A PROTECTIVE ORDER UNDER THE LAWS RELATING TO DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-1 reads as rewritten:

"**§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a

dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term 'protective order' includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties."

SECTION 2. G.S. 50B-3 reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order ~~or approve any consent agreement~~ to bring about a cessation of acts of domestic violence. The orders ~~or agreements~~ may:

(1) Direct a party to refrain from such acts;

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;

(3) Require a party to provide a spouse and his or her children suitable alternate housing;

(4) Award temporary custody of minor children and establish temporary visitation rights;

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

(6) Order either party to make payments for the support of a minor child as required by law;

(7) Order either party to make payments for the support of a spouse as required by law;

(8) Provide for possession of personal property of the parties;

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party,

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or

c. Otherwise interfering with the other party;

(10) Award attorney's fees to either party;

(11) Prohibit a party from purchasing a firearm for a time fixed in the order;

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission; and

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered ~~or consent orders approved~~ pursuant to this Chapter shall be for a fixed period of time not to exceed one year. ~~Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year.~~The court may renew a protective order, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the

current order is not required for an order to be renewed. Protective orders ~~entered or consent orders approved~~entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, and dismissals of the order shall also be promptly entered."

SECTION 3. G.S. 50B-4(c) reads as rewritten:

"(c) A valid protective order entered pursuant to this ~~section~~ Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court."

SECTION 4. G.S. 50B-8 reads as rewritten:

"§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.

The granting of a protective order, ~~approval of a consent agreement,~~ prosecution for violation of this Chapter, or the granting of any other relief or the institution of any other enforcement proceedings under this Chapter shall not be construed to afford a defense to any person or persons charged with fornication and adultery under G.S. 14-184 or charged with any other offense against the public morals; and prosecution, conviction, or prosecution and conviction for violation of any provision of this Chapter shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute defining an offense or offenses against the public morals."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 912*
PROPOSED COMMITTEE SUBSTITUTE S912-CSRK-24 [v.2]

4/10/2003 9:00:04 AM

Short Title: Sexual Battery. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.1 reads as rewritten:

"**§ 14-27.1. Definitions.**

As used in this Article, unless the context requires otherwise:

* * *

(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, or (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks.

(6) 'Touching' as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim."

SECTION 2. Article 7 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.5A. Sexual battery.**

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor. A person convicted of a second or subsequent offense under this section is guilty of a Class I felony."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 912: Sexual Battery.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	April 10, 2003	**Summary by:**	H. Alan Pell
Version:	PCS S912-CSRK-24 [v.2]		Committee Co-Counsel

SUMMARY: ***This bill creates the new criminal offense of sexual battery. The act becomes effective on December 1, 2003, and would apply to offenses committed on or after that date.***

CURRENT LAW: A person convicted of a simple assault and battery is guilty of a Class 2 misdemeanor. If the victim is a female, and the perpetrator is a male at least 18 years of age, the person is guilty of a Class A1 misdemeanor. If serious injury is inflicted, it is a Class A1 misdemeanor.

BILL ANALYSIS:

Section 1: The act would create new definitions in the Article that covers sex offenses (Art. 7A, Chapter 14). Both "Sexual contact" and "Touching" would be defined.

Section 2: Chapter 14, Article 7A, would be amended to add a new criminal offense. A person who contacts another person's sexual organ, anus, breast, groin, or buttocks, or if the person's sexual organ, anus, breast, groin, or buttocks contact another person, he would be guilty of the offense--if the contact was made for the purpose of sexual gratification, sexual arousal, or sexual abuse. The contact must be by force and against the will of the other person (without consent), or with a person who is mentally incapacitated, disabled, or physically helpless.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SENATE BILL 916*

Short Title:	Create Civil No-Contact Protective Orders.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 50C.

"Civil No-Contact Orders.

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Purpose.**

Sexual assault is one of the most heinous crimes a person can commit against another. Sexual assault inflicts humiliation, degradation, and terror on its victims. According to the Federal Bureau of Investigation (FBI), a woman is raped every six minutes in the United States. Rape is recognized as the most under-reported crime. Estimates suggest that only one in seven rapes is reported to authorities and in many instances where a rape is reported, the crime is never prosecuted. Victims who choose not to report the crime still desire safety and protection from future interactions with the offender, and it is the purpose of this Chapter that in these situations, the victim should be able to seek a simple civil remedy requiring that the offender be prohibited from having any contact with the victim.

"**§ 50C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – An emergency or plenary order granted under this Chapter, which includes a remedy authorized by G.S. 50C-13.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching or fondling by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

"**§ 50C-4. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil court by any of the following:

(1) A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration.

(2) A person on behalf of a minor child or an adult who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, but because of age, disability, health, or inaccessibility, cannot file the petition.

"**§ 50C-5. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil court, unless specific courts are designated by local rule or order.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-6. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified or accompanied by an affidavit and shall allege that the petitioner is or has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-7. Application of rules of civil procedure; rape crisis advocates.**

(a) Any proceeding to obtain, modify, re-open, or appeal a civil-no contact order shall be governed by the Rules of Civil Procedure, Chapter 1A of the General Statutes. The standard of proof in a civil no-contact order proceeding is proof by a preponderance of the evidence.

(b) In a civil no-contact order proceeding, rape crisis advocates shall be allowed to accompany and confer with the victim, unless otherwise directed by the court. Court administrators shall allow rape crisis advocates to assist victims of nonconsensual sexual conduct or nonconsensual sexual penetration in the preparation of petitions for civil no-contact orders. Rape crisis advocates are not engaged in the unauthorized practice of law when providing assistance pursuant to this subsection.

"**§ 50C-8. Venue.**

A petition for a civil no-contact order may be filed in any of the following:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the alleged nonconsensual sexual conduct or nonconsensual sexual penetration occurred.

"**§ 50C-9. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within seven days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a plenary civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with subsection (a) of this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-10. Hearings.**

A petition for a civil no-contact order shall be treated as an expedited proceeding, and no court may transfer or otherwise decline to decide all or part of the petition. Nothing in this section shall prevent the court from reserving issues if jurisdiction or notice requirements are not met.

"**§ 50C-11. Continuance.**

(a) Petitions for emergency remedies shall be granted or denied in accordance with the standards of G.S. 50C-14, regardless of the respondent's appearance or presence in court.

(b) Any action for a civil no-contact order is an expedited proceeding. Continuances shall be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance.

"**§ 50C-12. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the petitioner is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent regarding the issue of whether the petitioner consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the petitioner and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the petitioner may be examined or cross-examined.

"**§ 50C-13. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-14 for emergency orders or G.S. 50C-15 for plenary orders. The petitioner shall not be denied a civil no-contact order because the petitioner or the respondent is a minor. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim. Modification or extension of prior civil no-contact orders shall be in accordance with this Chapter.

(b) A civil no-contact order shall order the respondent to stay away from the petitioner or any other person protected by the civil no-contact order, or prohibit the respondent from entering or remaining present at the petitioner's school, place of employment, or other specified places at times when the petitioner is present, or both, if reasonable. Hardships or inconvenience to the respondent need not be balanced for the

court to enter a civil no-contact order or prohibit the respondent from entering premises where the respondent has no right of entry.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.

(2) The respondent was voluntarily intoxicated.

(3) The petitioner acted in self-defense or defense of another.

(4) The petitioner did not act in self-defense or defense of another.

(5) The petitioner left the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(6) The petitioner did not leave the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(d) Monetary damages are not recoverable as a remedy.

"**§ 50C-14. Emergency civil no-contact order; court holidays and evenings.**

(a) A court may issue an emergency civil no-contact order if the petitioner satisfies the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for an emergency order, the respondent may elect to file a general appearance and testify. Any resulting order may be an emergency order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-15 have been met, the court may issue a plenary order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day emergency order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue an emergency civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by facsimile, or otherwise, an emergency civil no-contact order at all times, whether or not the court is in session.

(e) Any order issued under this section and any documentation in support of the order shall be certified on the next court day to the appropriate court. The clerk of that court shall immediately assign a case number and file the petition, order, and any other documents with the court, enter the order of record, and file it with the sheriff for service in accordance with G.S. 50C-9. Filing the petition shall commence proceedings

for further relief under G.S. 50C-5. Failure to comply with the requirements of this subsection does not affect the validity of the order.

"**§ 50C-15. Plenary civil no-contact order.**

A plenary civil no-contact order shall issue if the petitioner has served notice of the hearing for the plenary civil no-contact order on the respondent in accordance with G.S. 50C-9 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-9.

(3) The respondent has answered or is in default.

"**§ 50C-16. Duration; extension of orders.**

(a) Unless reopened or extended or voided by entry of an order of greater duration, an emergency civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a plenary civil no-contact order shall be effective for a fixed period of time, not to exceed two years. A plenary civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding two years.

(c) Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of G.S. 50C-14 or G.S. 50C-15, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of subsection (c) of G.S. 50C-14, which applies only when the court is unavailable at the close of business or on a court holiday.

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

(e) Nothing in this Chapter shall be construed to encourage the practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a civil no-contact order.

"**§ 50C-17. Contents of orders.**

(a) All civil no-contact orders shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(b) A civil no-contact order shall further state the following:

(1) The name of each petitioner that the court finds was the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is an emergency or plenary order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in an emergency civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order is a Class A1 misdemeanor. Any second or subsequent violation is a Class H felony'.

"**§ 50C-18. Notice of orders.**

(a) Upon issuance of any civil no-contact order, the clerk of the court issuing the order shall immediately, or on the next court day if an emergency order is issued in accordance with subsection (c) of G.S. 50C-14, do the following:

(1) Enter the order on the record and file it in accordance with the district court procedures.

(2) Provide a file stamped copy of the order to the respondent, if present, and to the petitioner.

(b) The clerk of the issuing judge shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent. If the order was issued in accordance with subsection (c) of G.S. 50C-14, the clerk shall, on the next court day, file a certified copy of the order with the sheriff or other law enforcement personnel charged with maintaining criminal records.

(c) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order or short form notification.

(d) If the person against whom the civil no-contact order is issued is arrested and the written order is issued in accordance with subsection (c) of G.S. 50C-14 and received by the custodial law enforcement agency before the respondent or offender is released from custody, the custodial law enforcement agent shall promptly serve the order upon the respondent or offender before the respondent or offender is released from custody. In no event shall detention of the respondent or offender be extended for

hearing on the petition for civil no-contact order or receipt of the order issued under G.S. 50C-14.

(e) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

(f) Upon the request of the petitioner, within 24 hours of the issuance of a civil no-contact order, the clerk of the issuing judge shall send written notice of the order along with a certified copy of the order to any school, college, or university at which the petitioner is enrolled.

"**§ 50C-19. Violation.**

A knowing violation of a civil no-contact order is a Class A1 misdemeanor. A second or subsequent violation is a Class H felony.

"**§ 50C-20. Arrest without warrant.**

(a) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(b) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-21. Data maintenance by law enforcement agencies.**

(a) All local sheriff's departments shall furnish to the local police departments, on the same day as received, in the form and detail the police department requires, copies of any recorded emergency or plenary civil no-contact orders issued by the court and transmitted to the sheriff by the clerk of the court in accordance with subsection (b) of G.S. 50C-18. Each civil no-contact order shall be entered in the police department's data system on the same day it is issued by the court. If an emergency civil no-contact order was issued in accordance with subsection (c) of G.S. 50C-14, the order shall be entered in the police department's data system as soon as possible after receipt from the clerk of the court.

(b) Each local police department shall maintain a complete and systematic record and index of all valid and recorded civil no-contact orders issued under this Chapter. The recorded civil no-contact orders issued under this Chapter shall be used to inform all dispatchers and law enforcement personnel at the scene of an alleged incident of nonconsensual sexual conduct or nonconsensual sexual penetration of any violation of a civil no-contact order, any recorded prior incident of nonconsensual sexual conduct or nonconsensual sexual penetration involving the victim, and the effective dates and terms of any recorded civil no-contact order."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under Chapter 50C of the General Statutes, as enacted in Section 1 of this act, on or after that date.

SENATE BILL 916:
Create Civil No-Contact Protective Orders.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 10, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 916 would allow the courts to issue protective orders, like domestic violence orders under Chapter 50B, in situations where a person has been a victim of nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as a crime.***

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: Senate Bill 916 creates a new Chapter 50C entitled "Civil No-Contact Orders". The bill establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where non-consensual sexual conduct has occurred.

G.S. 50C-3 sets out applicable definitions for the Chapter, including definitions of "nonconsensual", "sexual conduct" and "sexual penetration".

G.S. 50C-4 permits a petition for a civil no-contact order to be filed by a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, or on behalf of another person who is such a victim.

G.S. 50C-5 sets out the procedures for initiating an action. Actions are started by the filing of a petition, with no filing fee or sheriff's service fee.

G.S. 50C-6 requires that the petition be accompanied by an affidavit alleging that the petitioner has been a victim under this law.

G.S. 50C-7 applies the Rules of Civil Procedure to proceedings under this law and requires findings by the court of proof by a preponderance of the evidence. Rape crisis advocates are permitted to assist in the petition process and as such shall not be considered to be unlawfully practicing law.

G.S. 50C-8 allows actions to be brought where either the petitioner or the respondent reside or where the nonconsensual sexual act occurred.

G.S. 50C-9 sets out the service of process that applies in these proceedings.

G.S. 50C-10 allows proceedings under this law to be handled as expedited proceedings.

G.S. 50C-12 allows testimony of the petitioner's past sexual conduct to be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-13 requires the court to issue a no-contact order where it is found that the petition is a victim of nonconsensual sexual acts. The order shall require the respondent to stay away from the petitioner including prohibitions against entering the petitioner's school, place of employment or other specified places at times when the petitioner is present. Denial of a remedy shall not be based on the fact that the respondent was justified in using force or was intoxicated, and not based on the petitioner acting

or failing to act in self-defense, or leaving or failing to leave a residence or household. Monetary damages are not allowed to be recovered under this law.

G.S. 50C-14 sets out a procedure for the issuance of emergency orders.

G.S. 50C-16 limits emergency orders to a minimum of 14 days and a maximum of 21 days. Plenary orders may last for a period of up to two years and may be renewed.

G.S. 50C-17 sets out the requirement for the contents of the order, including notice that violation of the order is punishable as a Class A1 misdemeanor for a first offense and as a Class H felony for subsequence offenses.

G.S. 50C-18 sets out a process of filing notices of the orders with law enforcement and service of orders on the respondent.

G.S. 50C-19 makes a violation of a no-contact order a Class A1 misdemeanor for a first offense and as a Class H felony for subsequence offenses.

G.S. 50C-20 authorizes an officer to arrest without a warrant for a violation of an order.

G.S. 50C-21 requires law enforcement to maintain a database of all outstanding no-contact orders.

EFFECTIVE DATE: The bill would become effective December 1, 2003 and would apply to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 921

Short Title:	Workplace Violence.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CONTRIBUTE TO THE PREVENTION OF WORKPLACE VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 23.

"Workplace Violence Prevention.

"**§ 95-260. Definitions.**

The following definitions apply in this Article:

(1) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.

c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

(2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

"**§ 95-261. Institution of civil action; temporary restraining orders.**

(a) Any employer whose employee has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace may seek an injunction under this Article on behalf of the employee by filing a petition alleging unlawful conduct against the employee. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this section in order to determine whether any safety concerns exist in relation to their participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this section shall not face disciplinary action based on their level of participation or cooperation.

(b) Upon filing a petition with the court for an injunction, the petitioner may move the court for a temporary restraining order if the petitioner also files an affidavit that shows, to the satisfaction of the court, reasonable proof that an employee has suffered unlawful conduct by the respondent and that great or irreparable harm will result to the employee if the temporary restraining order is not granted. The affidavit shall further show that the petitioner has conducted a reasonable investigation into the underlying facts that are the subject of the petition. If it clearly appears to the court that there is a danger of further unlawful conduct against the employee, the court may enter ex parte orders as it deems necessary to protect the employee from unlawful conduct. Upon the issuance of a temporary restraining order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the respondent, whichever occurs later. When no temporary restraining order is issued, a hearing shall be held after five days' notice of the hearing to the respondent or after five days from the date of service of process on the respondent, whichever occurs first.

(c) The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Article. Except for proceedings involving a nonresident respondent, the court of competent jurisdiction of the county where the unlawful conduct occurred has jurisdiction over all proceedings under this Article. For proceedings under this Article involving a nonresident respondent, the court of competent jurisdiction where the petitioner's workplace is located has jurisdiction when the act involving unlawful conduct meets the elements for personal jurisdiction under G.S. 1-75.4.

"**§ 95-262. Relief.**

(a) The court may include any one or more of the following orders in its temporary restraining order or its injunction under this Article:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's operations, or the employer's employee at the employer's workplace.

(2) Order the respondent to cease stalking the employer's employee at the employer's workplace.

(3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.

(4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.

(5) Order the respondent not to telephone the employer or the employer's employee at the employer's workplace.

(6) Order other relief deemed necessary and appropriate by the court.

(b) An injunction issued pursuant to this Article shall be for a fixed period of time not to exceed one year. Upon application of the petitioner, a judge may renew the original or any succeeding order for up to one additional year.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city where the petitioner's workplace is located. If the petitioner's workplace is not located in a city, or is located in a city with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the workplace is located.

"**§ 95-263. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Article.

(b) A valid protective order entered pursuant to this Article shall be enforced by all North Carolina law enforcement agencies without further order of the court.

"**§ 95-264. Limits on liability of employers.**

(a) An employer and an employer's agents who act in accordance with this Article shall be presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, are immune from civil liability for actions taken under this Article.

(b) Any employer, or its employee or invitee, that does not utilize the procedures of this Article shall not be liable for negligence, and evidence of the failure to utilize the procedures of this Article shall not be admissible as evidence of negligence.

"**§ 95-265. Scope of Article; other remedies available.**

This Article does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer or employee to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. There is appropriated from the General Fund to the Attorney General's Office of the Department of Justice the sum of one thousand five hundred dollars ($1,500) for the 2003-2004 fiscal year to be used to educate the public about workplace violence.

SECTION 3. Section 1 of this act becomes effective January 1, 2004. The remainder of this act becomes effective July 1, 2003.

SENATE BILL 921: Workplace Violence.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	April 10, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 921 sets up a process by which an employer can get a temporary restraining order and an injunction on behalf of an employee who has suffered unlawful conduct at the workplace.

BILL ANALYSIS: Senate Bill 921 creates a new Article 23 of Chapter 95 to be known as the Workplace Violence Prevention Act.

G.S. 95-260 would define unlawful conduct to include infliction of bodily injury, harassment, or threats.

G.S. 95-261 sets out a procedure whereby an employer may seek an injunction to prevent the prohibited conduct. The employer files a petition for an order. The petition must be accompanied by an affidavit setting out reasonable proof that the employee has suffered unlawful conduct and that great or irreparable harm would result to the employee if a temporary restraining order were not issued. If the court determines that there is a danger of further unlawful conduct against the employee, the court may issue ex parte orders. A hearing on the temporary restraining order must be held within 10 days. If a temporary restraining order is not issued, a hearing on the petition must be held within 5 days. All matters would be heard in district court.

G.S. 95-262 authorizes the court to issue orders prohibiting assault, molestation, interference, stalking, harassment, abuse, injury, telephone contact, or any other relief deemed necessary and appropriate. The injunction would be for a fixed period of time not to exceed one year, but the employer could apply to have it renewed.

G.S. 95-263 provides for violation of the orders to be punished by contempt.

G.S. 95-264 provides immunity for employers who act in good faith under this law, and does not create liability for negligence by failing to act as permitted by the law.

G.S. 95-265 makes it clear that the law does not otherwise diminish the employer's obligations to the employee nor does it limit any other remedy the employer or employee might otherwise have under law.

Section 2 of the bill directs that $1,500 of the funds appropriated to the Department of Justice be spent for public education on workplace violence.

BACKGROUND: Senate Bill 921 closely mirrors the provisions set out in Chapter 50B of the General Statutes, which provides a process by which victims of domestic violence can petition the court for protective orders to prevent future acts of violence.

EFFECTIVE DATE: Section 1 of this act would become effective January 1, 2004, and the remainder of the act would become effective July 1, 2003.

S921-SMRU-001

VISITOR REGISTRATION SHEET

J-1 Comm — Name of Committee

4-10-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dina DiMaio	NCBA
Beth Fickling	NCCADV
Don Dulls	DMHDD&SAS
Scott Completon	Dept Sta-G
Hadley Montgomery	Sec of State
Cynthia Floyd	NC Dept of Public Inst
Matt Osborne	AOC
James Andrews	NC State AFL-CIO
Mike Obern	"
DAN WHITLEY	CWA 3611
Drew Edwards	CWA 3611
Tom Coley	CWA
Gene Ainsworth	RJR

(2)

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doris Weaver	NC CWA Political Council
Gary A Bartlett	SBE
Johnnie Melton	"
Kathie Austin	FRD
Reeves Anderson	DJJDP-SPSV
Denise Huntley	Sen. Clodfelter - Intern
Richard Westbrook	UTU
[illegible]	[illegible]
[illegible]	SBE
Lee Mandell	NCLM
BRUCE THOMASON	PARKER POE
Stacy Flam	NCCHCFP
Ally Mackinnon	Local Govt Federal Credit Union

VISITOR REGISTRATION SHEET

(3)

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Katherine Joyce	NCASA
Barbara Cook	NCSJ
[illegible]	NCMS
Roz Scott	NC Child Care Coalition
Dallas Baker	Intern - Sen. Gulley
[illegible]	NC
[illegible]	DFPNC
Ron Aycock	Cont. CCM ASSOC
[illegible]	DOJ
Hugh Tilson	NCHA
W. H. Pell	NC DOJ
Monica Hostler	NCCBA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 15, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-52	Clarify Allowance of Court Costs	Sen. Clodfelter
•	SB-572	District Court Judge Eight Year Terms	Sen. Clodfelter
•	SB-577	Adjust Court Jurisdiction	Sen. Clodfelter
•	SB 688	Non Partisan DA Election	Sen. Thomas
•	SB-753	Qualifications For Magistrates	Sen. Jenkins
•	SB-992	Protect Master Settlement Money	Sen. Garrou

Senator Dan Clodfelter, Chair

J-1 COMMITTEE

April 15, 2003 a.m..

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 10:05 a.m. with fourteen members present. He introduced Pages Jacob Summey from Trinity, NC and Dustin Storm from Ashville, NC

SB 992 (Protect Master Settlement Money) was introduced by Senator Clodfelter. Bill sponsor, Senator Linda Garrou explained that the bill would amend the law that establishes how much money a tobacco product manufacturer who does not participate in the national tobacco Master Settlement Agreement has to place in escrow against possible future damage claims by the states. This amendment would change the determination of the amount to be placed in escrow from being based on the allocable share per state to an allocable share of units of tobacco sold in each individual state. See Bill Summary for further information. Senator Garrou introduced Mr. David Brems from the R.J. Reynolds Tobacco Company who spoke on the bill. Mr. Michael Weiser, Representative for Non-Participating Manufacturers spoke on the bill. Senator's David Hoyle, Charlie Albertson, Vernon Malone, Phillip Berger and R.C. Soles had questions about the bill. The questions were answered by Mr. Brems. Senator Clodfelter stated that the bill would not be voted on at this time to give members more time to study it and also let staff attorney's a chance to work on the language in the bill. The bill was displaced for a future date.

SB 753 (Qualifications For Magistrates) was introduced by Senator Clodfelter. Bill sponsor, Senator Clark Jenkins explained that the bill would expand the qualifications to be appointed a magistrate to include a person who had previously served at least 12 years as a clerk of superior court in North Carolina. Senator's Phillip Berger and Wib Gulley had questions about language in the bill. Senator Jenkins answered the questions and moved to amend the bill on Page 1, Line 7. See attached amendment. Senator Wib Gulley moved for a Favorable Report to the bill as amended. All members voted yes. Motion carried.

SB-577 (Adjust Court Jurisdiction) Committee Substitute was introduced by Senator R.C. Soles, Vice Chair. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill Sponsor, Senator Dan Clodfelter explained that the bill adjusts the jurisdiction of magistrates, clerks of court, district and superior courts, including permitting magistrates and clerks to hear criminal infractions. See Bill

Summary for further information. NC Chief District Judge, William M. Neely from Ashboro, NC spoke on the bill. Senator's Patrick Ballantine, Wib Gulley, Tony Rand, Jeanne Lucas, David Hoyle and R.C. Soles had questions. Judge Neely and Senator Clodfelter answered the questions. Senator Clark Jenkins moved for a Favorable Report. Senator Wib Gulley seconded the motion. Senator Lucas had a question and Senator Rand stated that he had questions and thought the members needed more time to study the bill before it was passed. Senator Clodfelter answered the questions and called for a vote on Senator Jenkins motion. The motion for a Favorable Report passed by one vote.

Being no further business the meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 992

Short Title:	Protect Master Settlement Money.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE STATE'S MASTER SETTLEMENT AGREEMENT MONEY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

SECTION 2. If this act, or any portion of the amendment made to G.S. 66-291(b)(2) by this act, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this act. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes, or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other

person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

SECTION 3. This act becomes effective October 1, 2003.

SENATE BILL 992:
Protect Master Settlement Money

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Garrou
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 992 would amend the law that establishes how much money a tobacco product manufacturer who does not participate in the national tobacco Master Settlement Agreement has to place in escrow against possible future damage claims by the states. This amendment would change the determination of the amount to be placed in escrow from being based on the allocable share per state to an allocable share of units of tobacco sold in each individual state.***

CURRENT LAW: As part of the national tobacco Master Settlement Agreement (MSA) each state was required to enact the Model Escrow Statute to cover the liability of Non-Participating Manufacturers (NPMs) and to create a level competitive playing field by preventing NPMs from undercutting the market due to savings from not having to make payments to the states like participating manufacturers.

The current model escrow statute, enacted as Article 37 – Tobacco Reserve Fund in Chapter 66 of the General Statutes. The amount a NPM currently has to put into escrow in the State based on their sales n the State that exceeds what their allocable share would have been had they participated may be refunded to the NPM from their escrow.

BILL ANALYSIS: Section 1 of the bill would amend the formula for a NPM's funds to be released from escrow by changing the determination from what the NPM's allocable market share would have been had they participated to a calculation based on the tobacco units sold in the State.

Section 2 contains a severability clause if either this provision or the underlying subsection is found to be unconstitutional that effectively restores the law as it exists prior to this amendment.

BACKGROUND: The Model Escrow Statute (Tobacco Reserve Fund in NC) was intended to create a reserve against which claims could be made against tobacco product manufacturers who were not given immunity from suit by participating in the Master Settlement Agreement. It was also intended to reduce the competitive advantage a manufacturer would gain from not having to make payments to the states under the MSA and not being subject to the advertising restrictions agreed to in the MSA.

The current formula for escrow payments presumes sales nationwide on the same allocable share as under the MSA. If a NPM focuses a large portion of their sales in one state, their allocable share under the current escrow statutes may be far less than the comparable payment a participating manufacturer has to make based on a per unit sold basis under the MSA. This amendment puts NPMs on the same basis for determining the amount of payments they are require to make into escrow as the participating manufacturers are required to make to the states under the MSA.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

S992-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 753*
PROPOSED COMMITTEE SUBSTITUTE S753-PCS40021-RU-21

Short Title: Qualifications for Magistrates. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have <u>at least 12 years' experience as the clerk of superior court in a county of this State or shall have</u> a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-15-03

S. B. No. 753 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) JENKINS

(Sen.)

moves to amend the bill on page 1, line 7

( ) WHICH CHANGES THE TITLE

by DELETING THE WORD "A" AND SUBSTITUTING THE WORD "THE" ; AND

ON PAGE 1, LINE 7 BY INSERTING BETWEEN THE WORDS "IN" AND "THIS" THE WORDS "~~A~~ A COUNTY OF"

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 753:
Qualifications for Magistrates.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 753 would expand the qualifications to be appointed a magistrate to include a person who had previously served at least 12 years as a clerk of superior court in North Carolina.***

CURRENT LAW: Currently persons qualifying for appointment as a magistrate must have a 4-year college degree, or a 2-year associate degree and 4 years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling.

BILL ANALYSIS: Senate Bill 753 would allow 12 years of experience as a clerk of superior court in North Carolina to be substituted for a 4-year or a 2-year college degree as qualification to be appointed as a magistrate.

EFFECTIVE DATE: The bill is effective when it becomes law.

S753-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 753*

Short Title:	Qualifications for Magistrates.	(Public)
Sponsors:	Senators Jenkins; and Lucas.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least 12 years' experience as a clerk of superior court in this State, or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 577
PROPOSED COMMITTEE SUBSTITUTE S577-PCS40020-RU-13

Short Title: Adjust Court Jurisdiction. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE MORE EFFICIENT USE OF ALL COURT PERSONNEL RESOURCES THROUGH CONCURRENT AND REVISED JURISDICTION AND PROCEDURES BY PROVIDING ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS UPON THE AGREEMENT OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, BY AUTHORIZING MAGISTRATES TO DETERMINE INDIGENCY AND ENTITLEMENT TO COUNSEL IN CASES CALENDARED BEFORE THEM, BY AUTHORIZING DISTRICT COURT JUDGES TO ACCEPT GUILTY PLEAS FOR CERTAIN CLASSES OF FELONY, BY PROVIDING FOR CONCURRENT JURISDICTION FOR DISTRICT AND SUPERIOR COURT JUDGES IN INFRACTIONS AND MISDEMEANOR CASES, BY RAISING THE JURISDICTIONAL AMOUNT FOR SMALL CLAIMS, BY AUTHORIZING THE USE OF EXPEDITED CHILD SUPPORT PROCESS UPON THE AGREEMENT OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, AND BY CONFORMING CERTAIN PROCEDURAL REQUIREMENTS IN ACTIONS FOR ABSOLUTE DIVORCE TO THE REQUIREMENTS IN OTHER CIVIL CASES, AS RECOMMENDED BY THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c) and G.S. 14-399(c1), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, to accept written appearances, waivers of trial or hearing, and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this ~~section,~~ subsection, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense. The additional authority granted in this subsection may be assigned to a magistrate by a chief district court judge

only with the consent of the clerk of superior court of the county in which the magistrate is assigned and after consultation with the district attorney."

SECTION 2. G.S. 7A-452(c) reads as rewritten:

"(c) (1) The clerk of superior court is authorized to make a determination of indigency and entitlement to counsel, as authorized by this Article. The word "court," as it is used in this Article and in any rules pursuant to this Article, includes the clerk of superior court.

(1a) A magistrate may make a determination of indigency and entitlement to counsel in connection with any case that is calendared before the magistrate, as authorized by this Article. As used in this Article, the term "court" includes magistrates.

(2) A judge of superior or district court having authority to determine entitlement to counsel in a particular case may give directions to the clerk or magistrate with regard to the determination of entitlement to counsel in that case; may, if he finds it appropriate, change or modify the determination made by the ~~clerk;~~ clerk or magistrate; and may set aside a finding of waiver of counsel made by the ~~clerk.~~ clerk or magistrate."

SECTION 3. G.S. 7A-180 is amended by adding a new subdivision to read:

"(10) Has the power, upon the mutual consent of the chief district court judge and the clerk of superior court and after consultation with the district attorney of the county in which the clerk of superior court serves, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 4. G.S. 15A-1115(a) reads as rewritten:

"(a) Appeal of District Court Decision. – A person who denies responsibility and is found responsible for an infraction in the district court, before a district court judge, before a magistrate pursuant to G.S. 7A-273(b), or before the clerk of court pursuant to G.S. 7A-180(10), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

SECTION 5. G.S. 15A-1431 reads as rewritten:

"**§ 15A-1431. Appeals by defendants from magistrate and district court judge; trial de novo.**

(a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may appeal for trial de novo before a district court judge without a jury. A defendant convicted before a magistrate pursuant to G.S. 7A-273(b), or before a clerk of superior

court pursuant to G.S. 7A-180(10), may appeal the decision to the criminal division of the superior court for a trial de novo.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.

(d) A defendant convicted by a magistrate pursuant to G.S. 7A-273, by a clerk of superior court pursuant to G.S. 7A-180(10), or by a district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the ~~magistrate or judge~~ judicial official who heard the case or, if ~~he~~ that official is not available, notice ~~must~~ shall be ~~given:~~ given in one of the following ways:

(1) Before a magistrate in the county, in the case of appeals from the ~~magistrate; or~~ magistrate.

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The ~~magistrate~~ magistrate, clerk, or district court judge ~~must~~ shall review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, ~~clerk~~ clerk, or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release. If the defendant cannot comply with conditions of pretrial release, the judge may order confinement in a local confinement facility pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

SECTION 6. G.S. 7A-272(c) reads as rewritten:

"(c) With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class ~~H or I felony~~ D, E, F, G, H, or I felony, regardless of the seriousness of the original charge, if:

(1) The defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense; or

(2) The defendant has been indicted for a criminal offense but the defendant's case is transferred from superior court to district court pursuant to G.S. 15A-1029.1."

SECTION 7. G.S. 15A-1029.1(a) reads as rewritten:

"(a) With the consent of both the prosecutor and the defendant, the presiding superior court judge may order a transfer of the defendant's case to the district court for the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class ~~H or I felony.~~ D, E, F, G, H, or I felony, regardless of the seriousness of the original charge."

SECTION 8. G.S. 7A-271 reads as rewritten:

"**§ 7A-271. Jurisdiction of superior court.**

(a) The superior court has exclusive, original jurisdiction over all criminal actions not assigned to the district court division by this Article, except that the superior court has jurisdiction to try a misdemeanor:

(1) Which is a lesser included offense of a felony on which an indictment has been returned, or a felony information as to which an indictment has been properly waived; or

(2) When the charge is initiated by presentment; or

(3) Which may be properly consolidated for trial with a felony under G.S. 15A-926;

(4) To which a plea of guilty or nolo contendere is tendered in lieu of a felony charge; or

(5) When a misdemeanor conviction is appealed to the superior court for trial de novo, to accept a guilty plea to a lesser included or related charge.

(a1) With the consent of the presiding district court judge and the presiding superior court judge, a superior court judge may exercise the jurisdiction of the district court to hear and enter judgment in misdemeanors pending in the district court. Appeals from misdemeanor convictions before a superior court judge exercising the jurisdiction of the district court shall be to superior court for a trial de novo before a different superior court judge.

(b) ~~Appeals~~ Except as otherwise provided by law, appeals by the State or the defendant from the district court are to the superior court. The jurisdiction of the superior court over misdemeanors appealed from the district court to the superior court for trial de novo is the same as the district court had in the first instance, and when that conviction resulted from a plea arrangement between the defendant and the State

pursuant to which misdemeanor charges were dismissed, reduced, or modified, to try those charges in the form and to the extent that they subsisted in the district court immediately prior to entry of the defendant and the State of the plea arrangement.

(c) When a district court is established in a district, any superior court judge presiding over a criminal session of court shall order transferred to the district court any pending misdemeanor which does not fall within the provisions of subsection (a), and which is not pending in the superior court on appeal from a lower court.

(d) The criminal jurisdiction of the superior court includes the jurisdiction to dispose of infractions only in the following circumstances:

(1) If the infraction is a lesser-included violation of a criminal action properly before the court, the court must submit the infraction for the jury's consideration in factually appropriate cases.

(2) If the infraction is a lesser-included violation of a criminal action properly before the court, or if it is a related charge, the court may accept admissions of responsibility for the infraction. A proper pleading for the criminal action is sufficient to support a finding of responsibility for the lesser-included infraction.

(e) With the consent of the presiding district court judge and the presiding superior court judge, a superior court judge may exercise the jurisdiction of the district court to hear and enter judgment in infractions pending in the district court. Appeals from infraction convictions before a superior court judge exercising the jurisdiction of the district court shall be to superior court for a trial de novo before a different superior court judge."

SECTION 9. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~four thousand dollars ($4,000);~~ five thousand dollars ($5,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

SECTION 10. G.S. 50-34 is amended by adding a new subsection to read:

"(a1) Districts May Elect Expedited Process. – A chief district court judge in a district court district that is not required by G.S. 50-33(b) to implement the expedited process may elect to implement the expedited child support process provided for in this Article in any or all counties within a district court district. A chief district court judge may implement the expedited child support process only with the consent of the clerk of

superior court of any county in which the process is implemented. Notwithstanding subsection (b) of this section, when a district court district elects to implement the expedited child support process, the chief district court judge and the clerk of superior court in an affected county shall determine by agreement whether the child support hearing officer or officers for that county shall be one or more clerks or assistant clerks or one or more magistrates. If it is decided that the hearing officer or officers for a county shall be magistrates, the chief district court judge shall designate the person or persons to serve as a hearing officer. If it is decided that the hearing officer or officers for a county shall be the clerk or assistant clerks, the clerk of superior court in the county shall designate the person or persons to serve as hearing officer. The chief district court judge, the clerk of superior court, and the Administrative Officer of the Courts shall ensure the qualification of the persons designated as child support hearing officers."

SECTION 11. G.S. 50-10 is repealed.

SECTION 12. G.S. 1A-1, Rule 55(b)(1), reads as rewritten:

"(b) Judgment. – Judgment by default may be entered as follows:

(1) By the Clerk. –

a. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales".

b. The clerk of superior court, upon request of the plaintiff, may enter judgment in cases in which the plaintiff's only claim against the defendant is for absolute divorce, or absolute divorce and the resumption of a former name, and the defendant has been defaulted for failure to appear, or the defendant has answered admitting the allegations of the complaint and joining in the request for an absolute divorce, or the defendant has filed a waiver of the right to answer and joined in the request for an

absolute divorce, and the defendant is not an infant or incompetent person."

SECTION 13. This act becomes effective October 1, 2003, and applies to cases pending or filed on or after that date.

SENATE BILL 577:
Adjust Court Jurisdiction.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S577-CSRU-13		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 577 adjusts the jurisdiction of magistrates, clerks of court, district and superior courts, including permitting magistrates and clerks to hear criminal infractions, Class 3 misdemeanors and expedited child support cases. It also allows district court judges to accept pleas in Class D through I felonies, allows superior court judges to hear misdemeanors and infractions in district court, raises the limits in small claims actions to $5,000, and allows judgments by default in divorce actions.***

BILL ANALYSIS: Section 1 of the bill gives magistrates additional authority, when assigned by the chief district court judge to hear and decide infractions and Class 3 misdemeanors. Appeals for trial de novo would be to the Superior Court. Currently infractions and Class 3 misdemeanors are first heard in district court without a jury.

Section 2 authorizes magistrates to determine indigency and assign counsel in connection with criminal cases heard before the magistrate. Currently clerks of court and district and superior court judges have this authority.

Section 3 gives clerks of court the additional authority, when assigned by the chief district court judge after consultation with the district attorney, to hear criminal infractions and Class 3 misdemeanors. Appeals for trial de novo would be to the Superior Court.

Section 4 makes it clear that criminal matters, infractions and Class 3 misdemeanors, heard by magistrates and clerks of court are subject to appeal for trial de novo to the Superior Court the same as all other criminal decisions in district court.

Section 5 makes conforming changes to the criminal procedure statute for criminal appeals for decisions by magistrates and clerks.

Section 6 and 7 expand the current authority of district court judges to accept pleas in Class H and I felony cases to also be allowed to accept pleas in Class D, E, F and G felony cases.

Section 8 authorizes superior court judges, with the consent of the presiding district court judge to hear and enter judgment in infraction and misdemeanor cases in district court. Appeals to superior court would be heard before a different superior court judge.

Section 9 raises the limit on civil claims that can be brought in Small Claims Court before a magistrate from $4,000 to $5,000. Appeals for trial de novo are to the district court.

Section 10 allows district court districts that are not required to implement the expedited child support determination process to implement such a process. The chief district court judge may implement the process with the consent of the clerk of superior court. The chief district court judge and the clerk determine whether the hearing officer or officers should be magistrates or assistant clerks. The chief

district court judge designates the magistrate to be the hearing officer, when applicable, and the clerk of court designates the assistant clerk to be the hearing officer, when applicable.

Section 11 repeals G.S. 50-10. This statute requires that the domestic court hear evidence in all divorce actions, even when the defendant fails to file an answer, or files an answer and admits the allegations and joins in the prayer for divorce.

Section 12 authorizes the clerk of court to enter judgments by default in divorce actions when the only claim is for divorce or divorce and resumption of a former name, and the defendant fails to answer the complaint, or answers the complaint by admitting to the allegations and joining in the request for an absolute divorce.

EFFECTIVE DATE: The bill becomes effective October 1, 2003 and applies to actions pending or filed on or after that date.

---

§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 577

Short Title:	Adjust Court Jurisdiction.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE MORE EFFICIENT USE OF ALL COURT PERSONNEL RESOURCES THROUGH CONCURRENT AND REVISED JURISDICTION AND PROCEDURES BY PROVIDING ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS UPON THE AGREEMENT OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, BY AUTHORIZING MAGISTRATES TO DETERMINE INDIGENCY AND ENTITLEMENT TO COUNSEL IN CASES CALENDARED BEFORE THEM, BY AUTHORIZING DISTRICT COURT JUDGES TO ACCEPT GUILTY PLEAS FOR CERTAIN CLASSES OF FELONY, BY PROVIDING FOR CONCURRENT JURISDICTION FOR DISTRICT AND SUPERIOR COURT JUDGES IN INFRACTIONS AND MISDEMEANOR CASES, BY RAISING THE JURISDICTIONAL AMOUNT FOR SMALL CLAIMS, BY AUTHORIZING THE USE OF EXPEDITED CHILD SUPPORT PROCESS UPON THE AGREEMENT OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, AND BY CONFORMING CERTAIN PROCEDURAL REQUIREMENTS IN ACTIONS FOR ABSOLUTE DIVORCE TO THE REQUIREMENTS IN OTHER CIVIL CASES, AS RECOMMENDED BY THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c) and G.S. 14-399(c1), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, to accept written appearances, waivers of trial or hearing, and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this ~~section,~~ subsection, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense. The additional authority granted in this subsection may be assigned to a magistrate by a chief district court judge

only with the consent of the clerk of superior court of the county in which the magistrate is assigned and after consultation with the district attorney."

SECTION 2. G.S. 7A-452(c) reads as rewritten:

"(c) (1) The clerk of superior court is authorized to make a determination of indigency and entitlement to counsel, as authorized by this Article. The word "court," as it is used in this Article and in any rules pursuant to this Article, includes the clerk of superior court.

(1a) A magistrate may make a determination of indigency and entitlement to counsel, in connection with any case that is calendared before the magistrate, as authorized by this Article. As used in this Article, the term "court" includes magistrates.

(2) A judge of superior or district court having authority to determine entitlement to counsel in a particular case may give directions to the clerk or magistrate with regard to the determination of entitlement to counsel in that case; may, if he finds it appropriate, change or modify the determination made by the ~~clerk;~~ clerk or magistrate; and may set aside a finding of waiver of counsel made by the ~~clerk.~~ clerk or magistrate."

SECTION 3. G.S. 7A-180 is amended by adding a new subdivision to read:

"(10) Has the power, upon the mutual consent of the chief district court judge and the clerk of superior court and after consultation with the district attorney of the county in which the clerk of superior court serves, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 4. G.S. 7A-181 reads as rewritten:

"**§ 7A-181. Functions of assistant and deputy clerks of superior court in district court matters.**

(a) Assistant and deputy clerks of superior court:

(1) Have the same powers and duties with respect to matters in the district court division as they have in the superior court division;

(2) Have the same powers as the clerk of superior court with respect to the issuance of warrants and acceptance of written appearances, waivers of trial and pleas of guilty; and

(3) Have the same power as the clerk of superior court to fix conditions of release in accordance with Chapter 15A, Article 26, Bail, and the same power as the clerk of superior court to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance.

(b) An assistant clerk of superior court also has the same power as the clerk of superior court, upon the mutual consent of the chief district court judge and the clerk of superior court and after consultation with the district attorney of the county in which the assistant clerk of superior court serves, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 5. G.S. 15A-1115(a) reads as rewritten:

"(a) Appeal of District Court Decision. – A person who denies responsibility and is found responsible for an infraction in the district court, before a district court judge, before a magistrate pursuant to G.S. 7A-273(b), before the clerk of court pursuant to G.S. 7A-180(10), or before an assistant clerk of superior court pursuant to G.S. 7A-181(b), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

SECTION 6. G.S. 15A-1431 reads as rewritten:

"**§ 15A-1431. Appeals by defendants from magistrate and district court judge; trial de novo.**

(a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may appeal for trial de novo before a district court judge without a jury. A defendant convicted before a magistrate pursuant to G.S. 7A-273(b), before a clerk of superior court pursuant to G.S. 7A-180(10), or before an assistant clerk of superior court pursuant to G.S. 7A-181(b) may appeal the decision to the criminal division of the superior court for a trial de novo.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.

(d) A defendant convicted by a magistrate pursuant to G.S. 7A-273, by a clerk of superior court pursuant to G.S. 7A-180(10), by an assistant clerk of superior court pursuant to G.S. 7A-181(b), or by a district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the ~~magistrate or judge~~ judicial official who heard the case or, if ~~he~~ that official is not available, notice ~~must~~ shall be ~~given:~~ given in one of the following ways:

(1) Before a magistrate in the county, in the case of appeals from the ~~magistrate; or~~ magistrate.

(1a) Before an assistant clerk of court, in the case of appeals from the clerk or assistant clerk of superior court.

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The ~~magistrate~~ magistrate, clerk, assistant clerk, or district court judge ~~must~~ shall review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, ~~clerk~~ clerk, assistant clerk, or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release. If the defendant cannot comply with conditions of pretrial release, the judge may order confinement in a local confinement facility pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

SECTION 7. G.S. 7A-272(c) reads as rewritten:

"(c) With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class ~~H or I felony~~ D, E, F, G, H, or I felony, regardless of the seriousness of the original charge, if:

(1) The defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense; or

(2) The defendant has been indicted for a criminal offense but the defendant's case is transferred from superior court to district court pursuant to G.S. 15A-1029.1."

SECTION 8. G.S. 15A-1029.1(a) reads as rewritten:

"(a) With the consent of both the prosecutor and the defendant, the presiding superior court judge may order a transfer of the defendant's case to the district court for the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class ~~H or I felony.~~ D, E, F, G, H, or I felony, regardless of the seriousness of the original charge."

SECTION 9. G.S. 7A-271 reads as rewritten:

"**§ 7A-271. Jurisdiction of superior court.**

(a) The superior court has exclusive, original jurisdiction over all criminal actions not assigned to the district court division by this Article, except that the superior court has jurisdiction to try a misdemeanor:

(1) Which is a lesser included offense of a felony on which an indictment has been returned, or a felony information as to which an indictment has been properly waived; or

(2) When the charge is initiated by presentment; or

(3) Which may be properly consolidated for trial with a felony under G.S. 15A-926;

(4) To which a plea of guilty or nolo contendere is tendered in lieu of a felony charge; or

(5) When a misdemeanor conviction is appealed to the superior court for trial de novo, to accept a guilty plea to a lesser included or related charge.

(a1) With the consent of the presiding district court judge and the presiding superior court judge, a superior court judge may exercise the jurisdiction of the district court to hear and enter judgment in misdemeanors pending in the district court. Appeals from misdemeanor convictions before a superior court judge exercising the jurisdiction of the district court shall be to superior court for a trial de novo before a different superior court judge.

(b) ~~Appeals~~ Except as otherwise provided by law, appeals by the State or the defendant from the district court are to the superior court. The jurisdiction of the superior court over misdemeanors appealed from the district court to the superior court for trial de novo is the same as the district court had in the first instance, and when that conviction resulted from a plea arrangement between the defendant and the State pursuant to which misdemeanor charges were dismissed, reduced, or modified, to try those charges in the form and to the extent that they subsisted in the district court immediately prior to entry of the defendant and the State of the plea arrangement.

(c) When a district court is established in a district, any superior court judge presiding over a criminal session of court shall order transferred to the district court any pending misdemeanor which does not fall within the provisions of subsection (a), and which is not pending in the superior court on appeal from a lower court.

(d) The criminal jurisdiction of the superior court includes the jurisdiction to dispose of infractions only in the following circumstances:

(1) If the infraction is a lesser-included violation of a criminal action properly before the court, the court must submit the infraction for the jury's consideration in factually appropriate cases.

(2) If the infraction is a lesser-included violation of a criminal action properly before the court, or if it is a related charge, the court may accept admissions of responsibility for the infraction. A proper pleading for the criminal action is sufficient to support a finding of responsibility for the lesser-included infraction.

(e) With the consent of the presiding district court judge and the presiding superior court judge, a superior court judge may exercise the jurisdiction of the district

court to hear and enter judgment in infractions pending in the district court. Appeals from infraction convictions before a superior court judge exercising the jurisdiction of the district court shall be to superior court for a trial de novo before a different superior court judge."

SECTION 10. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~four thousand dollars ($4,000);~~ five thousand dollars ($5,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

SECTION 11. G.S. 50-34 is amended by adding a new subsection to read:

"(a1) Districts May Elect Expedited Process. – A chief district court judge in a district court district that is not required by G.S. 50-33(b) to implement the expedited process may elect to implement the expedited child support process provided for in this Article in any or all counties within a district court district. A chief district court judge may implement the expedited child support process only with the consent of the clerk of superior court of any county in which the process is implemented. Notwithstanding subsection (b) of this section, when a district court district elects to implement the expedited child support process, the chief district court judge and the clerk of superior court in an affected county shall determine by agreement whether the child support hearing officer or officers for that county shall be one or more clerks or assistant clerks or one or more magistrates. If it is decided that the hearing officer or officers for a county shall be magistrates, the chief district court judge shall designate the person or persons to serve as a hearing officer. If it is decided that the hearing officer or officers for a county shall be the clerk or assistant clerks, the clerk of superior court in the county shall designate the person or persons to serve as hearing officer. The chief district court judge, the clerk of superior court, and the Administrative Officer of the Courts shall ensure the qualification of the persons designated as child support hearing officers."

SECTION 12. G.S. 50-10 is repealed.

SECTION 13. G.S. 1A-1, Rule 55(b)(1), reads as rewritten:

"(b) Judgment. – Judgment by default may be entered as follows:

(1) By the Clerk. –

a. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain,

the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales".

b. The clerk of superior court, upon request of the plaintiff, may enter judgment in cases in which the plaintiff's only claim against the defendant is for absolute divorce, or absolute divorce and the resumption of a former name, and the defendant has been defaulted for failure to appear, or the defendant has answered admitting the allegations of the complaint and joining in the request for an absolute divorce, or the defendant has filed a waiver of the right to answer and joined in the request for an absolute divorce, and the defendant is not an infant or incompetent person."

SECTION 14. This act becomes effective October 1, 2003, and applies to cases pending on or filed on or after that date.

VISITOR REGISTRATION SHEET

4-15-03 AM

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pat Pally	NCATL
Dick Taylor	NCAOC
~~Matt Osborne~~	AOC
Rick Fox	AOC
William M Neely	Chief District Judge 19-B Court Organization Committee
Peg Dorer	Conference of D.A.s
Celia Willoughby	DA 10B Dist.
~~John Motley~~	GOV OFFICE
Dallas Baker	Intern - Sen. Gulley
Denise Huntley	Intern - Sen Clodfelter
Chris Heagarty	NC Center for Voter Education
Andy Ellen	NCBMA
MICHAEL WEISEL	SAM BRANDT

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-15-03 - AM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ROBERT RADER	N.C. ASSOC. OF DISTRICT COURT JUDGES
[signature]	Gov's office
Joanne Stevens	NCCASA
[signature]	NC C2A Political Council
Henry Hutaff	N.C.S.O.A.
Lorin Mueller	NC Coalition of Police
Elizabeth Dalton	Bode & Assoc.
Kevin Leonard	NCSR
John Goodman	Mercer & Assoc.
Wayne King	Leg. Counsel
Jim Bell	NC Manufacturers Assn.
Colleen Kochanek	Hafer & Caldwell, P.A.
Brian Lewis	Planned Parenthood

VISITOR REGISTRATION SHEET

J-1 — 15 April 2003

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robt Paschal	Young, Moore
Rob Schofield	NC Justice Ctr.
Bill Rowe	NC Justice Ctr
Cam Cass	BPMHC
Cressy Poole	Smith Anderson.
Joanne Stevens	NCCASA
Robin Smith	DENR
Cam'll Stell	NCCH
M Bryan	Capitol Times
Nick Fountain	Young Moore
Bill Finley	Comm of Banks
M Anne Lagan	
Barbara Cansler	NAIS

(3)

VISITOR REGISTRATION SHEET

4-15-03 AM

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Drennan	Institute of Government
ALLAN HEAD	N.C. Bar Assoc.
Larry Bewley	LBA
Susan M Smith	NC CWA Political Committee
Doris Weaver	"
Sam Pond	WCSR
John Rainey	Altria
GENE AINGWORTH	RJR
JOHN WITHROW	NC STATE WATCH
Roger Bon	Bon and Assoc - Lorillard
Jim Duncan	Altria
Jennie Winn	Atty
Gary Mc	

VISITOR REGISTRATION SHEET

J-I
Name of Committee

15 April 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Poole	Ward + Smith
Paige Johnson	Planned Parenthood
Bruce Thompson	Parker Poe
Frank Grace	Gov.'s office
David Stoller	State Employees
Mike Brown	NC Pride AFLCIO
Bob Hall	Democracy North Carolina
John McMillan	MFRS
Joyce Peters	HP Assoc
Ted Kaplan	KQC
[illegible]	[illegible]

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 15, 2003	1:00 to 2:00 pm	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-326	Soliciting SUTA Dumping a Felony	Sen. Hoyle
•	SB-622	Electronic Signatures By Public Agencies	Sen. Reeves
•	SB-916	Create Civil No-Contact Protective Orders	Sen. Clodfelter
•	SB-921	Workplace Violence	Sen. Rand
•	SB-1011	Health Care Provider Liens	Sen. Berger

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April15, 2003 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 1:05 p.m. with thirteen members present. He introduced Pages, Nathaniel Fetting from Angier, NC and Jonas Pinkney from Charlotte, NC.

SB-572 (District Judge 8 -Year Terms) was introduced by Senator R. C. Soles, Co Chair. Bill sponsor, Senator Dan Clodfelter explained that the bill would propose to the voters a Constitutional Amendment to elect District Court judges to 8-year terms rather than the current 4-year terms. See attached Bill Summary for further information. Judge Robert Rader, from Wake County District Court, spoke on the bill. Senator's Tony Rand, Charlie Albertson, Phillip Berger and Jeanne Lucas had questions that were answered by Judge Rader. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-688 (Nonpartisan DA Election) was introduced by Senator Clodfelter. Bill sponsor, Senator Scott Thomas explained that the bill would make the elections of District Attorneys nonpartisan. It would use the same nonpartisan-primary-and-election method that is now employed for the election of all judges. See attached Bill Summary for further information. Senator's Tony Rand, Phillip Berger and Vernon Malone, had questions. Senator Thomas and Staff Attorney Bill Gilkeson answered the questions. Ms. Peg Dorer from NC District Attorneys Association spoke on the bill. Senator Cecil Hargett moved for a Favorable Report. All members voted yes. Motion carried.

SB-622 (Electronic Signatures By Public Agencies) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Eric Reeves explained that the bill blends the provisions of 3 successive pieces of legislation to make clear that all electronic signatures created pursuant to law may be accepted by State agencies, even those that require attestation by a notary. See attached Bill Summary for further information. Mr. Scott Templeton, Assistant Deputy Secretary of State, spoke on the bill. Senator's Ham Horton and Cecil Hargett had questions about the bill. Staff Attorney, Bill Gilkeson answered the questions. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

Senator Clodfelter stated that SB-1011 would not be heard at this time.

SB-326 Soliciting SUTA Dumping a Felony) Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley moved to adopt the Committee Substitute. All members voted yes. Motion carried. Staff Attorney, Bill Gilkeson explained the changes to the bill. Mr. Sam Johnson, NC CPA Association spoke on the bill. There was no discussion. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried. Senator Wib Gulley had a question. Mr. Gilkeson answered the question. Senator David Hoyle spoke on the bill and thanked the members for all the work they had done on the bill.

SB-916 (Create Civil No-Contact Protective Orders) Committee Substitute (Sen. Clodfelter) and SB-921 (Workplace Violence (Sen. Rand) were introduced by Senator Clodfelter, but he stated that they would not be voted on at this time. Senator Wib Gulley moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff Attorney, Walker Reagan would explain how both bills were combined. . Senator's Tony Rand, Charlie Albertson, Phillip Berger, and Wib Gulley had questions. Mr. Reagan answered the questions. Senator Rand said he would like an Amendment made to the bill. Senator Clodfelter said the bill would not be voted on at this time, and would be displaced for a future meeting. Senator Clodfelter thanked members for their help on the bills.

Being no further business the meeting adjourned at 2:05 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, April 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **572** District Judge 8-Year Terms.
Sequential Referral: None
Recommended Referral: None

S.B. **688** Nonpartisan DA Election.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 572

Short Title:	District Judge 8-Year Terms.	(Public)
Sponsors:	Senators Clodfelter; Rand and Reeves.	
Referred to:	Judiciary I.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 10. District Courts.**

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of ~~four~~ eight years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the next statewide election, primary or otherwise, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment providing eight-year terms for District Court Judges, the same as for all other judges of the General Court of Justice."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. Section 1 applies beginning with District Court Judges elected in the 2004 general election. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 4. G.S. 7A-140 reads as rewritten:

"Article 14.

"District Judges.

"§ 7A-140. Number; election; term; qualification; oath.

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of ~~four~~ eight years, beginning on the first Monday in December following his election.

Each district judge shall devote his full time to the duties of his office. He shall not practice law during his term, nor shall he during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

SECTION 5. G.S. 163-1 is amended in the table by rewriting the "TERM OF OFFICE" entries for Judges of the District Courts to read: "Eight years".

SECTION 6. Sections 4 and 5 of this act shall take effect only upon approval of the voters of the constitutional amendment set forth in Section 1 of this act. If the constitutional amendment proposed in that section is approved by the voters, Sections 4 and 5 of this act shall become effective at the same time as the constitutional amendment.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 572:
District Judge 8-Year Terms.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 15, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 572 would propose to the voters a Constitutional Amendment to elect District Court judges to 8-year terms rather than the current 4-year terms. The referendum on the amendment would occur at the "next statewide election, primary or otherwise," which would probably be the primary to be held May 4, 2004. If approved by the voters, the 8-year terms would apply to District Court judges elected in 2004 and thereafter.

CURRENT LAW: The State Constitution provides that appellate and Superior Court judges are elected to serve for 8-year terms, but that District Court judges are elected to serve for 4-year terms.

In the last decade, the General Assembly has gradually changed the mode of election of judges so that they now are all elected in on a nonpartisan ballot. The lengths of terms, however, have not been changed since the establishment of the General Court of Justice in the 1960s.

BILL ANALYSIS: Senate Bill 572 would amend Article IV, Section 10 of the State Constitution to length District Court judges terms from 4 to 8 years. *Section 1 of the bill.*

The referendum on the constitutional amendment would be held "at the next statewide election, primary or otherwise." The next regularly scheduled statewide vote is the primary on May 4, 2004. So unless a referendum on another matter is scheduled earlier, the referendum on 8-year terms would occur May 4, 2004. The ballot language would be FOR or AGAINST *"Constitutional amendment providing eight-year terms for District Court Judges, same as for all other Judges of the General Court of Justice."* *Section 2 of the bill.*

The 8-year terms would apply beginning with judges elected in November 2004. *Section 3 of the bill.*

Sections 4 and 5 of the bill are cleanup statutory changes to comply with the constitutional change.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 688

Short Title:	Nonpartisan DA Election.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Judiciary I.	

April 2, 2003

BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT ATTORNEYS.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Subchapter X and Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"**SUBCHAPTER X. ELECTION OF DISTRICT ATTORNEYS AND APPELLATE, SUPERIOR, AND DISTRICT COURT JUDGES.**

Article 25.

Nomination and Election of District Attorneys and Appellate, Superior, and District Court Judges.

"**§ 163-321. Applicability.**

The nomination and election of district attorneys, justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections

shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date _____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed _____:

(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.

Judges of the Court of Appeals.

Judges of the superior courts.

Judges of the district courts.
District attorney.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be

nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is district attorney, superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of district attorney, justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for district attorney, justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"§ 163-327. Vacancies of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of district attorney, justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.

If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the opening of the filing period under G.S. 163-323(b), nominations shall be made by primary election as provided by this Article, without designation as to the vacancy.

(2) If the vacancy occurs beginning on opening of the filing period under G.S. 163-323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy.

(3) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivision (1) or (2) of this section. The persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of district attorney, justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of

Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.
Judge of the Court of Appeals.
Superior court judge.
District court judge.
District attorney.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333:** Repealed by Session Laws 2001-398, s. 15.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 2. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
United States Senators
Members of the House of Representatives of the United States
~~District attorneys~~

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators

Members of the State House of Representatives
All county offices."

SECTION 3. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
~~All District Attorneys of the General Court of Justice~~	~~One percent (1%) of the annual salary of the office sought~~
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)

Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 4. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
~~District Attorneys of the General Court of Justice,~~
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 5. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for

candidates for member of the U.S. House of ~~Representatives, District Attorney,~~ Representatives and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives ~~District Attorney~~ State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State

representative district	Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

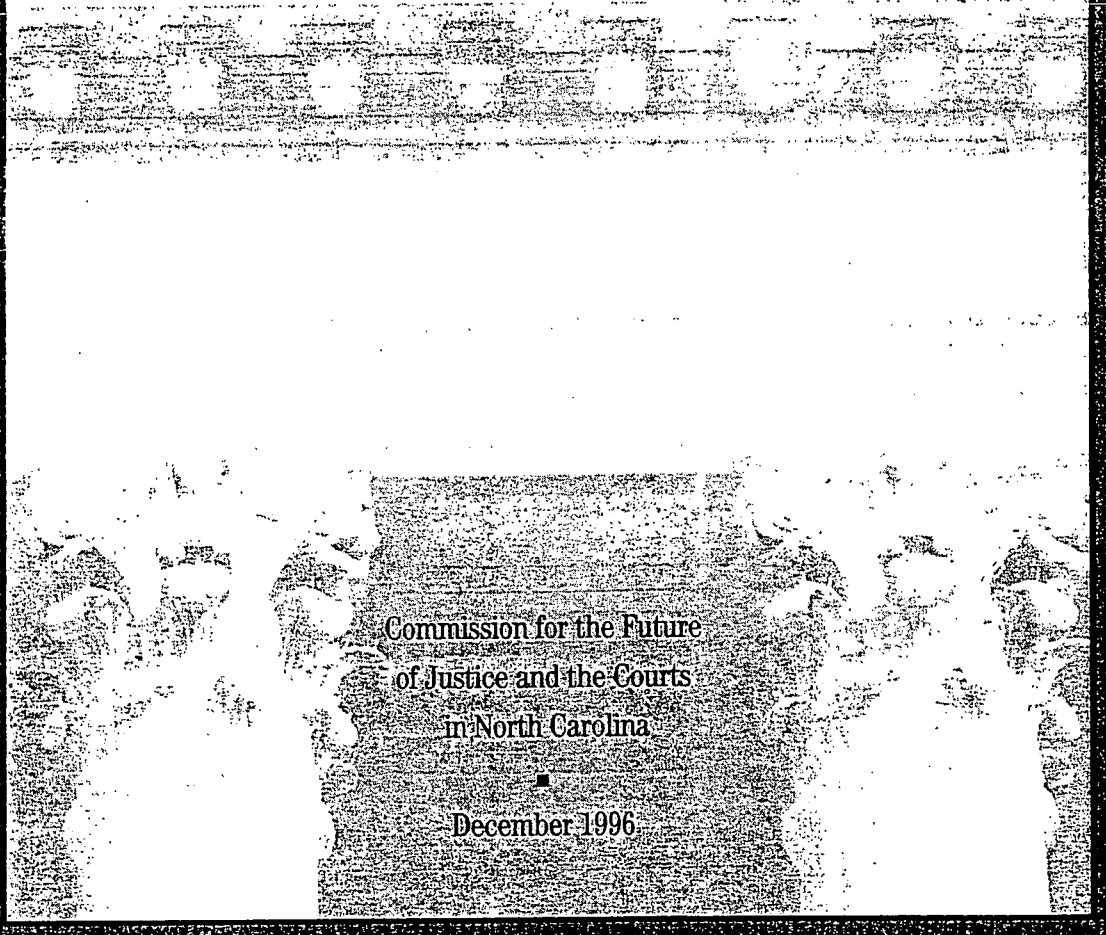
In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 7. This act is effective when it becomes law.

S.B. 688

Without Favor, Denial or Delay

A Court System for the 21st Century



Commission for the Future
of Justice and the Courts
in North Carolina

■

December 1996

The council, described in more detail on pages 34-35, will include members appointed by the governor, speaker of the House, president pro tem of the Senate, and chief justice, plus several court officials. More than two-thirds of the members will come from outside the court system, and a majority of those will be non-lawyers.

Judicial councils established at the circuit level will have a different composition and role than the state council. Each circuit council will be chaired by the chief circuit judge and include representatives of the circuit attorneys, public defenders, clerks of court, the private bar and related agencies, and citizens appointed by the boards of county commissioners. This board will monitor the local courts to see how well they are solving the problems of their area and meeting state standards, and will advise the chief circuit judge and circuit administrator on matters requiring cooperation between the courts and other affected parties and agencies. In addition, it will help determine the budget priorities for the circuit and review local rules.

Judges. Judges will be appointed by the governor to eight-year terms subject to voter approval at retention elections. For the Court of Appeals and the Supreme Court, the State Judicial Council (minus its court official members) will submit three nominations for the governor's selection. The individual chosen will stand for a retention election at the first general election occurring more than a year after the appointment. If retention is approved by the voters, the judge or justice will serve an eight-year term, followed by another retention vote. For the appellate courts, the retention election will be statewide; for trial judges, it will be within the circuit only.

Nominations to the governor for trial judgeships will come from circuit nominating panels consisting of nine members: four non-lawyers appointed by the State Judicial Council, four lawyers named by the circuit bar and a chair chosen by the chief justice. The procedure will be the same as for appellate appointments; that is, the governor will choose from the three nominees and the judge selected will have to stand for retention elections at the next general election and every eight years thereafter.

At each election, the state or circuit nominating panel will publicize its recommendation on whether the judge should be retained. That recommendation will be based on the regular evaluation conducted for each judge. As now, all judges and justices will be subject to discipline and removal by the Supreme Court, following investigation and recommendation by the Judicial Standards Commission.

As part of the move toward greater independence, judges' salaries will be set by the State Judicial Council, subject to disapproval by the General Assembly. Competitive salary schedules, combined with merit selection, will help attract the best qualified attorneys to these positions.

Prosecution and Defense. North Carolina's courts will no longer have to juggle the inherent conflicts of a judicial department housing both the judges who hear disputes and the prosecutors and public defenders who represent the state and defendants in criminal cases. The new more rational approach will place circuit attorneys and public defenders in the executive branch. As a result, judges who decide cases will no longer have even nominal supervisory or budgetary authority over the advocates who appear before them.

For organizational purposes, the circuit (district) attorneys will be located in a free-standing agency called the Office of Solicitor General. That office will assist and help train the circuit attorneys and prepare a budget for submission to the governor to be transmitted to the legislature. The solicitor general, appointed by the governor for a six-year term, will represent the state in all criminal appeals, but in some instances may choose to allow the circuit attorney to keep and handle the case through appeal.

Similarly, an Office of State Public Defender will be

How Judges Are Chosen

State Supreme Courts	
Appointed by the Governor	**25 States**
From names submitted by commission	21
Without nominating commission	4
Retention election at end of term	15
Reappointment by governor at end of term	4
Retains office for life unless removed	3
Reappointment by nominating commission	1
Reappointment by legislature	1
Partisan election after first term, then retention elections	1
Nonpartisan Elections	**12 States**
Partisan Elections	**10 States**
Initial and all subsequent elections are partisan	8
Initial election partisan, then retention elections	2
Election by the Legislature	**3 States**
Subject to reelection by legislature	2
For life	1

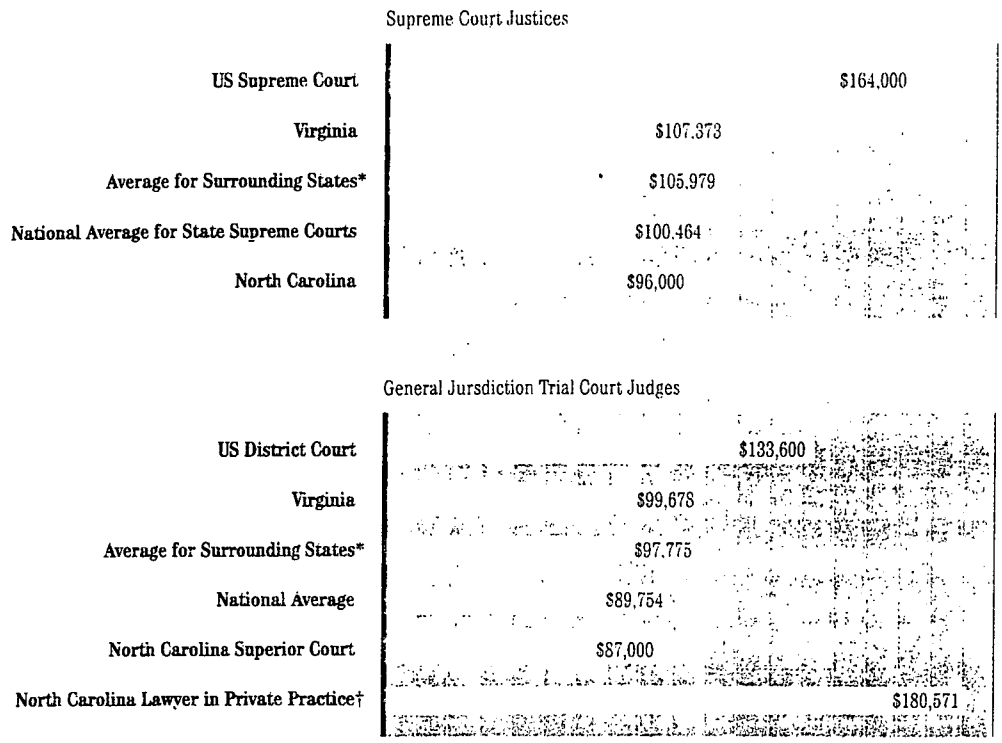
General Trial Judges	
Appointed by the Governor	**18 States**
From names submitted by commission	15
Without nominating commission	3
Retention election at end of term	8
Reappointment by governor at end of term	3
Retains office for life unless removed	3
Reappointment by nominating commission	1
Reappointment by legislature	1
Nonpartisan election at end of term	1
Partisan election after first term, then retention elections	1
Nonpartisan Elections	**16 States**
Partisan Elections	**13 States**
Initial and all subsequent elections are partisan	11
Initial election partisan, then retention elections	2
Election by the Legislature	**3 States**
Subject to reelection by the legislature	2
For life	1

EXHIBIT 10 *Source: American Judicature Society; National Center for State Courts*

established within—but independent from—the Office of Administration. A governing board will choose a state public defender who in turn will name a public defender for each circuit. The circuit public defender will be responsible for seeing that counsel is provided for all qualified indigent defendants in the circuit, either through a public defenders office or through private counsel reimbursed by the state.

The geographic subdivisions for circuit attorneys and public defenders will be the same circuits as used for

Judicial Salaries



*Virginia, South Carolina, Tennessee, Maryland, Kentucky, Georgia, Florida
†Average 1995 cash compensation for a lawyer licensed before 1973 practicing in a firm of 5 to 9 lawyers

EXHIBIT 11 *Source: National Center for State Courts; NC Bar Association*

the trial court. It is necessary to have the same boundaries to effectively coordinate case scheduling, and the Constitution should prescribe that the lines always stay together.

Prosecution, like judicial decisionmaking, should not be based on partisan considerations, or even appear to be. Unlike judges, though, circuit attorneys are intended to represent, in part, the public's views on law enforcement, as expressed through elections. Thus, the Commission proposes that circuit attorneys be chosen in nonpartisan elections. Their terms would continue to be four years.

Clerks of Court. Clerks of courts serve an important judicial function today. They provide an informal process for handling estates, guardianship and a variety of other issues. Under the Commission's proposed system, the jurisdiction of clerks will remain the same, allowing them to resolve many matters administratively, as well as serve as judges in probate matters and other special proceedings. Decisions of clerks may be appealed to a circuit judge.

To protect them from the whims of political fortune and to increase accountability, clerks will be appointed rather than elected. The appointment will be made by the chief circuit judge for a four-year term, from names submitted by a county merit selection panel. During that term, the clerk can be removed only for cause.

Magistrates. Magistrates will be responsible for more cases. The jurisdiction of non-lawyer magistrates will

SENATE BILL 688:
Nonpartisan DA Election.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Thomas
Date:	April 15, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 688 would make the elections of District Attorneys nonpartisan. It would use the same nonpartisan-primary-and-election method that is now employed for the election of all judges. The change is statutory and does not require a change to the Constitution. It would go into effect when it became law and would be used for District Attorney elections in 2004.

CURRENT LAW: The State Constitution specifies that District Attorneys must be elected for 4-year terms, but it leaves to the General Assembly to prescribed the mode of election. *Article IV, Sec. 18.* By statute, the General Assembly has prescribed partisan election for DAs.

BILL ANALYSIS: Section 1 of Senate Bill 688 amends Subchapter X of G.S. Chapter 163 to add District Attorneys to the list of judicial officials who are elected according to the same nonpartisan method. Subchapter X was first enacted in 1996 to switch Superior Court judges from partisan to nonpartisan elections. It was amended in 2001 to add District Court judges to the nonpartisan list, then again in 2002 to add Supreme Court justices and Court of Appeals judges.

The nonpartisan election method used is the nonpartisan-primary-and-election method. (Durham's mayor and city council are also elected that way.) Candidates file during the even-numbered year at the same time as candidates for partisan offices such as sheriff, General Assembly, and Governor. The nonpartisan primary, held on the same day as the partisan primaries in May, serves to narrow the field of candidates to two. If no more than two candidates have filed, there is no primary. The nonpartisan election, held on the same day as the partisan elections in November, decides who wins.

All subsequent sections of the bill are conforming changes to other statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 622
PROPOSED COMMITTEE SUBSTITUTE S622-PCS35236-RR-5

Short Title: Promote E-Commerce & E-Government. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE E-COMMERCE AND E-GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58.4 reads as rewritten:

"**§ 66-58.4. Use of electronic signatures.**

~~(a)~~ All public agencies may accept electronic ~~signatures.~~signatures pursuant to this Article, pursuant to Article 40 of this Chapter (the Uniform Electronic Transactions Act), or pursuant to other law.

~~(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.~~"

SECTION 2. G.S. 66-58.5 reads as rewritten:

"**§ 66-58.5. Validity of electronic signatures.**

(a) An electronic signature contained in a transaction undertaken pursuant to this Article between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

a. It is unique to the person using it;

b. It is capable of certification;

c. It is under sole control of the person using it;

d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction undertaken pursuant to this Article between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

(c) This Article does not affect the validity of, presumptions relating to, or burdens of proof regarding an electronic signature that is accepted pursuant to Article 40 of this Chapter or other law."

SECTION 3. G.S. 55-16-22 reads as rewritten:

"**§ 55-16-22. Annual report.**

(a) Except as provided in subsections (a1) and (a2) of this section, each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver an annual report to the Secretary of ~~Revenue.~~Revenue in paper form or, in the alternative, directly to the Secretary of State in electronic form as prescribed by the Secretary of State under this section.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The Secretary of State shall prescribe the form needed to file an annual report electronically and shall provide this form by electronic means. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered. office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names, titles, and business addresses of its principal officers.

(4a) Repealed by Session Laws 1997-475, s. 6.1.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) An annual report ~~required~~ eligible to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. At the option of the filer, an annual report may be filed directly with the Secretary of State in electronic form. An annual report required to be delivered to the Secretary of State is

due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

SECTION 4. The Department of the Secretary of State may study and make recommendations to the 2004 Regular Session of the 2003 General Assembly regarding what changes are desirable to the Notary Public Act, Chapter 10A of the General Statutes, to further facilitate electronic notarization and make other changes to that Chapter.

SECTION 5.(a) This act is enacted or adopted after the date of the enactment of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., and hereby makes specific reference as required by that law.

SECTION 5.(b) This act is effective when it becomes law, with Sections 1, 2, and 3 applying to all filings made on or after that date.

SENATE BILL 622:
Promote E-Commerce and E-Government.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Reeves
Date:	April 10, 2003	**Summary by:**	William R. Gilkeson
Version:	S622-CSRR-5 [v.2]		Committee Co-Counsel

SUMMARY: ***The PCS for Senate Bill 622 blends the provisions of 3 successive pieces of legislation to make clear that all electronic signatures created pursuant to law may be accepted by State agencies, even those that require attestation by a notary.*** *Section 1 of the bill.* ***The PCS would also allow a corporation's annual report to be filed with the Secretary of State electronically.*** *Section 2 of the bill.* ***Effective when becomes law; applies to filings made on or after that date.***

CURRENT LAW: In 1998 the General Assembly enacted the **Electronic Commerce Act**, to facilitate electronic commerce with public agencies and to regulate the use of electronic signatures when used in commerce with public agencies. *Article 11A of G.S. Chapter 66.* In the Electronic Commerce Act, an "electronic signature" is defined as "any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature." *G.S. 66-58.2(2).* A "transaction" is defined as "an electronic transmission between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents." *G.S. 66-58.2(6).* The Electronic Commerce Act provides generally that all public agencies may accept electronic signatures, but does not permit electronic signatures where the signature requires attestation by a notary.

In 2000 the General Assembly enacted the **Uniform Electronic Transactions Act (UETA)**, an act adopted by more than half the states and intended to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce in both the public and private context. *Article 40 of Chapter 66.* UETA covers some of the same territory as the Electronic Commerce Act, but has a more expansive definition of "electronic signature" ("an electronic sound, symbol, or process attached to, or logically associated with, a record and executed or adopted with the intent to sign the record"). UETA specifically permits electronic signatures in notarized documents. *G.S. 66-321.*

Also in 2000, Congress passed the **Electronic Signatures in Global and National Commerce Act (E-SIGN)**, which covered some of the same territory. In an intricate interplay of federal and State law, E-SIGN allowed some State law to prevail in cases involving UETA. UETA permits some State acts later than the passage of E-SIGN only if the State act "makes specific reference to this Act." *15 U.S.C. § 7002(a).*

BILL ANALYSIS:

Blending the Laws. The PCS for SB 622 amends a provision of the Electronic Commerce Act to make clear that electronic signatures may be accepted by State agencies as long as the electronic signatures were pursuant to some law. *Section 1.* The PCS also amends the Electronic Commerce Act to provide that it does not affect the validity, presumptions, or burdens of proof of UETA or other law. *Section 2.*

Notarization. The bill removes from the Electronic Commerce Act the prohibition on electronic signatures where notarization is required, making that Act consistent with UETA. *Section 1.* The PCS also authorizes the Secretary of State to study and make recommendations to the 2004 Short Session about further changes that might be made in the Notary Public Act to facilitate electronic notarization. *Section 4.*

Electronic Filing of Annual Reports by Corporations. The PCS allows a corporation to file its annual report electronically. *Section 3.* This is already possible for some other business entities.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 622

Short Title:	Electronic Signatures By Public Agencies.	(Public)
Sponsors:	Senator Reeves.	
Referred to:	Judiciary I.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE USE OF ELECTRONIC SIGNATURES BY PUBLIC AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58.4 reads as rewritten:

"**§ 66-58.4. Use of electronic signatures.**

~~(a)~~ ~~All public~~ Public agencies may accept electronic ~~signatures.~~signatures as provided in this Article or as provided in Article 40 of Chapter 66 of the General Statutes.

~~(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.~~"

SECTION 2. G.S. 66-58.5 reads as rewritten:

"**§ 66-58.5. Validity of electronic signatures.**

(a) An electronic signature contained in a transaction undertaken pursuant to this Article between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

a. It is unique to the person using it;

b. It is capable of certification;

c. It is under sole control of the person using it;

d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction undertaken pursuant to this Article between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 326
PROPOSED COMMITTEE SUBSTITUTE S326-PCS75235-RR-2

Short Title: Deterring SUTA Dumping. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW ON CHANGING THE FORMS OF BUSINESSES FOR UNEMPLOYMENT INSURANCE TAX PURPOSES AND TO INCREASE PENALTIES, SO AS TO DETER THE PRACTICE OF STATE UNEMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) is amended by adding a new sub-subdivision to read:

"a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:

1. 'Control of the business enterprise' may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

2. A 'continuity of control' will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business

enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business."

SECTION 2. G.S. 96-18 is amended by adding a new subsection to read:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a 'contribution tax return preparer' to the same extent as it applies to an income tax preparer. As used in this subsection, a 'contribution tax return preparer' is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn."

SECTION 3. Section 2 of this act becomes effective December 1, 2003. The remainder of this act is effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 326

Short Title:	Soliciting SUTA Dumping a Felony.	(Public)
Sponsors:	Senators Hoyle and Clodfelter.	
Referred to:	Judiciary I.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SOLICITING A VIOLATION OF OR CONSPIRING TO VIOLATE THE LAW MAKING IT A MISDEMEANOR FOR EMPLOYING UNITS TO MAKE FALSE STATEMENTS TO THE EMPLOYMENT SECURITY COMMISSION IS GUILTY OF A FELONY, SO AS TO DETER THE PRACTICE OF STATE EMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-18(b) reads as rewritten:

"(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. Notwithstanding G.S. 14-2.6(b), any person who solicits any person to violate this subsection is guilty of a Class H felony. Any person, other than the employing unit or an officer or employee of that unit, who conspires to violate this subsection, is guilty of a Class H felony."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 916*

Short Title:	Create Civil No-Contact Protective Orders.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 50C.

"Civil No-Contact Orders.

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Purpose.**

Sexual assault is one of the most heinous crimes a person can commit against another. Sexual assault inflicts humiliation, degradation, and terror on its victims. According to the Federal Bureau of Investigation (FBI), a woman is raped every six minutes in the United States. Rape is recognized as the most under-reported crime. Estimates suggest that only one in seven rapes is reported to authorities and in many instances where a rape is reported, the crime is never prosecuted. Victims who choose not to report the crime still desire safety and protection from future interactions with the offender, and it is the purpose of this Chapter that in these situations, the victim should be able to seek a simple civil remedy requiring that the offender be prohibited from having any contact with the victim.

"**§ 50C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – An emergency or plenary order granted under this Chapter, which includes a remedy authorized by G.S. 50C-13.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching or fondling by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

"**§ 50C-4. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil court by any of the following:

(1) A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration.

(2) A person on behalf of a minor child or an adult who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, but because of age, disability, health, or inaccessibility, cannot file the petition.

"**§ 50C-5. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil court, unless specific courts are designated by local rule or order.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-6. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified or accompanied by an affidavit and shall allege that the petitioner is or has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-7. Application of rules of civil procedure; rape crisis advocates.**

(a) Any proceeding to obtain, modify, re-open, or appeal a civil-no contact order shall be governed by the Rules of Civil Procedure, Chapter 1A of the General Statutes. The standard of proof in a civil no-contact order proceeding is proof by a preponderance of the evidence.

(b) In a civil no-contact order proceeding, rape crisis advocates shall be allowed to accompany and confer with the victim, unless otherwise directed by the court. Court administrators shall allow rape crisis advocates to assist victims of nonconsensual sexual conduct or nonconsensual sexual penetration in the preparation of petitions for civil no-contact orders. Rape crisis advocates are not engaged in the unauthorized practice of law when providing assistance pursuant to this subsection.

"**§ 50C-8. Venue.**

A petition for a civil no-contact order may be filed in any of the following:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the alleged nonconsensual sexual conduct or nonconsensual sexual penetration occurred.

"**§ 50C-9. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within seven days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a plenary civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with subsection (a) of this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-10. Hearings.**

A petition for a civil no-contact order shall be treated as an expedited proceeding, and no court may transfer or otherwise decline to decide all or part of the petition. Nothing in this section shall prevent the court from reserving issues if jurisdiction or notice requirements are not met.

"**§ 50C-11. Continuance.**

(a) Petitions for emergency remedies shall be granted or denied in accordance with the standards of G.S. 50C-14, regardless of the respondent's appearance or presence in court.

(b) Any action for a civil no-contact order is an expedited proceeding. Continuances shall be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance.

"**§ 50C-12. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the petitioner is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent regarding the issue of whether the petitioner consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the petitioner and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the petitioner may be examined or cross-examined.

"**§ 50C-13. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-14 for emergency orders or G.S. 50C-15 for plenary orders. The petitioner shall not be denied a civil no-contact order because the petitioner or the respondent is a minor. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim. Modification or extension of prior civil no-contact orders shall be in accordance with this Chapter.

(b) A civil no-contact order shall order the respondent to stay away from the petitioner or any other person protected by the civil no-contact order, or prohibit the respondent from entering or remaining present at the petitioner's school, place of employment, or other specified places at times when the petitioner is present, or both, if reasonable. Hardships or inconvenience to the respondent need not be balanced for the

court to enter a civil no-contact order or prohibit the respondent from entering premises where the respondent has no right of entry.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.

(2) The respondent was voluntarily intoxicated.

(3) The petitioner acted in self-defense or defense of another.

(4) The petitioner did not act in self-defense or defense of another.

(5) The petitioner left the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(6) The petitioner did not leave the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(d) Monetary damages are not recoverable as a remedy.

"**§ 50C-14. Emergency civil no-contact order; court holidays and evenings.**

(a) A court may issue an emergency civil no-contact order if the petitioner satisfies the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for an emergency order, the respondent may elect to file a general appearance and testify. Any resulting order may be an emergency order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-15 have been met, the court may issue a plenary order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day emergency order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue an emergency civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by facsimile, or otherwise, an emergency civil no-contact order at all times, whether or not the court is in session.

(e) Any order issued under this section and any documentation in support of the order shall be certified on the next court day to the appropriate court. The clerk of that court shall immediately assign a case number and file the petition, order, and any other documents with the court, enter the order of record, and file it with the sheriff for service in accordance with G.S. 50C-9. Filing the petition shall commence proceedings

for further relief under G.S. 50C-5. Failure to comply with the requirements of this subsection does not affect the validity of the order.

"**§ 50C-15. Plenary civil no-contact order.**

A plenary civil no-contact order shall issue if the petitioner has served notice of the hearing for the plenary civil no-contact order on the respondent in accordance with G.S. 50C-9 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-9.

(3) The respondent has answered or is in default.

"**§ 50C-16. Duration; extension of orders.**

(a) Unless reopened or extended or voided by entry of an order of greater duration, an emergency civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a plenary civil no-contact order shall be effective for a fixed period of time, not to exceed two years. A plenary civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding two years.

(c) Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of G.S. 50C-14 or G.S. 50C-15, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of subsection (c) of G.S. 50C-14, which applies only when the court is unavailable at the close of business or on a court holiday.

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

(e) Nothing in this Chapter shall be construed to encourage the practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a civil no-contact order.

"**§ 50C-17. Contents of orders.**

(a) All civil no-contact orders shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(b) A civil no-contact order shall further state the following:

(1) The name of each petitioner that the court finds was the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is an emergency or plenary order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in an emergency civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order is a Class A1 misdemeanor. Any second or subsequent violation is a Class H felony'.

"**§ 50C-18. Notice of orders.**

(a) Upon issuance of any civil no-contact order, the clerk of the court issuing the order shall immediately, or on the next court day if an emergency order is issued in accordance with subsection (c) of G.S. 50C-14, do the following:

(1) Enter the order on the record and file it in accordance with the district court procedures.

(2) Provide a file stamped copy of the order to the respondent, if present, and to the petitioner.

(b) The clerk of the issuing judge shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent. If the order was issued in accordance with subsection (c) of G.S. 50C-14, the clerk shall, on the next court day, file a certified copy of the order with the sheriff or other law enforcement personnel charged with maintaining criminal records.

(c) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order or short form notification.

(d) If the person against whom the civil no-contact order is issued is arrested and the written order is issued in accordance with subsection (c) of G.S. 50C-14 and received by the custodial law enforcement agency before the respondent or offender is released from custody, the custodial law enforcement agent shall promptly serve the order upon the respondent or offender before the respondent or offender is released from custody. In no event shall detention of the respondent or offender be extended for

hearing on the petition for civil no-contact order or receipt of the order issued under G.S. 50C-14.

(e) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

(f) Upon the request of the petitioner, within 24 hours of the issuance of a civil no-contact order, the clerk of the issuing judge shall send written notice of the order along with a certified copy of the order to any school, college, or university at which the petitioner is enrolled.

"**§ 50C-19. Violation.**

A knowing violation of a civil no-contact order is a Class A1 misdemeanor. A second or subsequent violation is a Class H felony.

"**§ 50C-20. Arrest without warrant.**

(a) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(b) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-21. Data maintenance by law enforcement agencies.**

(a) All local sheriff's departments shall furnish to the local police departments, on the same day as received, in the form and detail the police department requires, copies of any recorded emergency or plenary civil no-contact orders issued by the court and transmitted to the sheriff by the clerk of the court in accordance with subsection (b) of G.S. 50C-18. Each civil no-contact order shall be entered in the police department's data system on the same day it is issued by the court. If an emergency civil no-contact order was issued in accordance with subsection (c) of G.S. 50C-14, the order shall be entered in the police department's data system as soon as possible after receipt from the clerk of the court.

(b) Each local police department shall maintain a complete and systematic record and index of all valid and recorded civil no-contact orders issued under this Chapter. The recorded civil no-contact orders issued under this Chapter shall be used to inform all dispatchers and law enforcement personnel at the scene of an alleged incident of nonconsensual sexual conduct or nonconsensual sexual penetration of any violation of a civil no-contact order, any recorded prior incident of nonconsensual sexual conduct or nonconsensual sexual penetration involving the victim, and the effective dates and terms of any recorded civil no-contact order."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under Chapter 50C of the General Statutes, as enacted in Section 1 of this act, on or after that date.

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	April 16, 2003	8:30 to 10:00	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB 6	Ban Video Poker/All But Reservations	Sen. Albertson
•	SB 19	Township ABC Elections	Sen. Albertson
•	SB-315	Minor's Entertainment Contracts	Sen. Horton
•	SB 629	State Banking Laws	Sen. Clodfelter
•	SB-772	Repeal Plumbing Laws	Sen. Allran
•	SB-776	Workers' Comp/Definition of Employee	Sen. Dalton

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 16, 2003 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 8:37 a.m. with twelve members present. He introduced Pages Hunter Bratton and Cody Faison, both from Raleigh, NC.

SB-6 (Ban Video Poker/All But Reservations) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Albertson explained that the bill would ban the possession or operation of video gaming equipment, except by a federally recognized Indian Tribe that is authorized to conduct video gaming by the Indian Regulatory Gaming Act and a valid Tribal-state Compact. See attached Bill Summary for further information. Staff Attorney, Hal Pell explained the bill in more detail. See handouts. Senator's Toney Rand had a question that was answered by Staff Attorney, Jerry Cohen. Senator Clodfelter asked Jim Pendergraph, Sheriff from Mecklenburg County to speak on the bill. Reverend Mark Creech from the Christian Action League of NC spoke on the bill, and introduced Mr. Lee McGraw who spoke to the members of his addiction to video poker. Mr. Jeff Hunt, District Attorney, John Rustin, NC Family Policy, Ron Lien, Fayetteville, John Williams, NC State Crime Control & Safety, all spoke in favor of the bill. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-19 (Township ABC Elections) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Albertson explained that the bill would permit ABC elections in any township located in a county where cities and townships comprising more than twenty percent of the population have previously approved the sale of alcoholic beverages. See attached Bill Summary for further information. Senator Tony Rand had a question about Townships. Staff Attorney, Bill Gilkeson explained Townships and percent lines. Ms. Ann Fulton, Acting Commissioner of NC ABC Board, Staff Attorney, Walker Reagan and Mr. Gilkeson answered questions asked by Senator's David Hoyle, Phillip Berger and Vernon Malone, Jeanne Lucas, and Charlie Albertson. Mr. T. Jerry Williams, NC Restaurant Association spoke on the bill.

Reverend Mark Creech spoke on the bill. Senator Clodfelter stated that the bill would not be voted on at this time, and would be displaced and heard at a future date.

SB-776 (Workers' Comp/Definition of Employee) was introduced by Senator Clodfelter. Bill sponsor, Senator Walter Dalton explained that the bill would define an "employee" under the Worker's Compensation Act to exclude persons who deliver newspapers or shopping news directly to the public. See attached Bill Summary for further information. Senator's Tony Rand, David Hoyle, Phillip Berger, and Ham Horton had questions. Mr. John Bussian, Attorney for NC Press Assoc. and Mr. Dick Taylor, NC Academy of Trial Lawyers spoke on the bill. Senator Dalton stated that he would work on the language in the bill. Senator Clodfelter displaced the bill for a future hearing.

SB-629 (State Banking Laws) Committee Substitute was introduced by Senator Phillip Berger, Co Chair. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained that the bill defines the requirements for valid subordination agreements to add clarity to the law. See attached Bill Summary for further information. Mr. Chris Vaughn, Attorney with the firm of Caruthers & Roth in Greensboro, NC spoke on the bill. Senator Linda Garrou moved for a Favorable Report. All members voted yes. Motion carried.

SB-315 (Minor's Entertainment Contracts) was introduced by Senator Clodfelter. Senator Ham Horton moved for adoption of the amendment. All members voted yes. Motion carried. See attached Amendment. Bill sponsor, Senator Ham Horton explained that the bill would give NC a statue similar to California's recently amended "Jackie Coogan Law" to protect the earnings of underage entertainment and sports performers until they reach adulthood. See attached Bill Summary for further information. Senator Phillip Berger moved for a Favorable Report to bill as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 9:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

SENATE BILL 6:
Ban Video/All But Reservations.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	April 16, 2003	**Summary by:**	H. Alan Pell
Version:	PCS S6-CSRK-25[v.2]		Committee Co-Counsel

SUMMARY: ***This act would ban the possession or operation of video gaming equipment, except by a federally recognized Indian Tribe that is authorized to conduct video gaming by the Indian Regulatory Gaming Act and a valid Tribal-State Compact.***

CURRENT LAW: It is unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession, a slot machine or device. (G.S. 14-306.1). However, the legislation, passed in 2000, allowed for operation of machines that were

- Lawfully in operation, and available for play, within this State on or before June 30, 2000; and
- Listed in this State by January 31, 2000 for ad valorem taxation for the 2000-2001 tax year.

Certain video gaming machines [VGM] (e.g., pinball, computer) that are played for amusement, or involve the use of skill and dexterity, or to make scores, are not prohibited if the games:

1. Do not issue any receipt or other form of record which can be redeemed for cash, cash equivalent, prizes, or award free replays, or
2. In operation, limit to eight the number of credits or replays that can be played at one time, and provide coupons that allow exchange for prizes that do not exceed ten dollars ($10).

BILL ANALYSIS:

Section 1: The act repeals the current provision, G.S. 14-306.1, which prohibits the possession and operation of VGM (see Current Law, above).

Section 2: Enacts G.S. 14-306.1A, banning the possession or operation of VGM.

- Subparagraph (a). Sets forth the prohibition on operation, allowance, placement into operation, or possessing for the purpose of operation any video gaming machine, as described in subparagraph (b). Allows for an exception for an Indian tribe operating and possessing video gaming machines, if conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe.
- Subparagraph (b). Defines video gaming machines as those defined in G.S. 14-306(a)(attached), and provides illustrations of types of games that are prohibited. VGM described at G.S. 14-306(b)(2) are also prohibited, unless operated pursuant to a Class III Tribal-State Compact. The act would not prohibit VGM described at G.S. 14-306(b)(1):

> [Machines that] Do not emit, issue, display, print out, or otherwise record any receipt, paper, coupon, token, or other form of record which is capable of being redeemed, exchanged, or repurchased for cash, cash equivalent, or prizes, or award free replays.

(over)

- Subparagraph (c). Exempts assemblers, repairers, manufacturers, and transporters of VGM that are for out-of-state use, or for lawful use on Indian land. The VGM cannot be played while in-state.
- Subparagraph (d). It is unlawful to warehouse VGM, except for the activities set forth in Subparagraph (c).
- Subparagraph (e). Clarifies that the statute does not apply to tribe activities conducted pursuant to an approved Class III Tribal-State Gaming Compact, applicable to that tribe, as provided by State law.

Section 3: Makes a technical correction to the statute that makes a violation of the slot machine law a violation of the ABC laws. An ABC permittee is prohibited from allowing gambling on licensed premises.

Section 4: Amends the statute authorizing the Governor to enter into Class III Tribal-State gaming compacts, pursuant to State law and the Indian Gaming Regulatory Act. The games allowed by a Compact may include those that are otherwise prohibited by State law, but specifically allowed on Indian lands. (See Section 1, subparagraph (e)).

Section 5: Amends the statute declaring that it is not a violation of public policy for federally recognized Indian tribes to conduct games that are authorized by a valid Tribal-State Compact. The authorized games may include those that are allowed by State law on Indian lands, pursuant to the exception contained in G.S. 14-306.1A(e).

Section 6: Amends the criminal law statute authorizing the destruction of gambling machines, including VGM. The section also excepts activities conducted pursuant to a valid Tribal-State Compact.

Section 7: Repeals the penalty provision relating to the statute repealed by Section 1 of the act.

Section 8: Repeals the Video Report requirement (by the Secretary of Revenue) for activities subsequent to December 1, 2003.

Section 9: The act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The act applies to compacts and amendments executed prior to December 1, 2003. The act is suspended if a court stays the possession and operation of video gaming equipment on Indian land because such gaming is not allowed elsewhere. The act is void if a final Order is entered that prohibits the possession and operation of video gaming equipment on Indian land because such gaming is not allowed elsewhere.

BACKGROUND: The penalty for a violation of the act are as follows:

- First Offense: Class 1 misdemeanor
- Second Offense: Class I felony
- Third or Subsequent Offense: Class H felony

Litigation: Recent decisions (2002) from the California state courts have upheld the conduct of Class III gaming on Indian lands when challenged as (1) in violation of the equal protection laws, in that similar gaming was not allowed on non-Indian lands, or (2) in violation of the IGRA, as Compacts are to allow gaming that is not prohibited in the State. A federal district court has noted that if a State has legalized a game, "if only for tribes", it can become a term of a State-Tribal compact.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 16, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

S.B. **315** Minor's Entertainment Contracts.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **326** Soliciting SUTA Dumping a Felony.

Draft Number:	PCS 75235
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **622** Electronic Signatures By Public Agencies.

Draft Number:	PCS 35236
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 6
PROPOSED COMMITTEE SUBSTITUTE S6-PCS40013-RK-25

Short Title: Ban Video Poker/All But Reservations. (Public)

Sponsors:

Referred to:

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A VALID TRIBAL-STATE COMPACT.

Whereas, the State of North Carolina desires to clearly set forth its policy against commercial forms of gaming; and

Whereas, the State of North Carolina desires to recognize the unique relationship between it and the federally recognized Indian tribe within the State; and

Whereas, the State of North Carolina desires to make it clear that it does not consider the activities of the Eastern Band of Cherokee Indians conducted pursuant to the Compact between it and the Eastern Band of Cherokee Indians to be commercial gaming because the Federal Indian Gaming Regulatory Act restricts the use of proceeds from gaming operations conducted by federally recognized Indian tribes to governmental services and activities that further the self-determination of the tribe; and

Whereas, the State of North Carolina desires to reaffirm that all activities conducted pursuant to such Compact or any amendment thereto are not commercial gaming and that same are lawful and not against the public policy of the State of North Carolina; and

Whereas, the State of North Carolina recognizes the tribe's substantial capital investment in reliance on the Compact, the payments made by the tribe pursuant to the Compact, and the creation of jobs and other positive impacts the tribe's activities have brought to the entire economy of Western North Carolina; and

Whereas, the State through this legislation intends to make it clear that the State will honor its commitments under the Compact and amendments, to further express its legislative intent to fully recognize the rights of the tribe in its special sovereign governmental authority to conduct gaming on tribal lands, and to express the intent of the State to recognize as lawful, on tribal lands, all gaming activities conducted

by the tribe pursuant to the approved Tribal-State Compact as the same may from time to time be amended by the tribe and the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-306.1 is repealed.

SECTION 2. Part 1 of Article 37 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

(a) Ban on Machines. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any video gaming machine as defined in subsection (b) of this section, except for the exemption for a federally recognized Indian tribe under subsection (e) of this section for whom it shall be lawful to operate and possess machines as listed in subsection (b) of this section if conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe, as provided in G.S. 147-12(14) and G.S. 71A-8.

(b) Definitions. – As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as, by way of illustration:

(1) A video poker game or any other kind of video playing card game.
(2) A video bingo game.
(3) A video craps game.
(4) A video keno game.
(5) A video lotto game.
(6) Eight liner.
(7) Pot-of-gold.
(8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or token, or use of any credit card, debit card, or any other method that requires payment to activate play of any of the games listed in this subsection. The enumeration of games in the list in this subsection does not authorize the possession or operation of such game if it is otherwise prohibited by law.

For the purpose of this section, a video gaming machine includes those that are within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video gaming machine does not include those that are within the scope of the exclusion provided in G.S. 14-306(b)(1).

(c) Exemption for Certain Machines. – This section shall not apply to assemblers, repairers, manufacturers, and transporters of video gaming machines who assemble, repair, manufacture, and transport them for sale in another state as long as the machines, while located in this State, cannot be used to play the prohibited games and does not apply to those who assemble, repair, manufacture, and sell such machines for

use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

(d) Ban on Warehousing. – It is unlawful to warehouse any video gaming machine except in conjunction with the permitted assembly, repair, manufacture, and transportation of such machines under subsection (c) of this section.

(e) Exemption for Activities Under IGRA. – Notwithstanding any other prohibitions in State law, the form of Class III gaming otherwise prohibited by subsections (a) through (d) of this section may be legally conducted on Indian lands which are held in trust by the United States Government for and on behalf of federally recognized Indian tribes if conducted in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

SECTION 3. G.S. 14-306.2 reads as rewritten:

"**§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.**

A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes for the purposes of G.S. 18B-1005(a)(3)."

SECTION 4. G.S. 147-12(14) reads as rewritten:

"(14) ~~To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the ~~State~~ State, consistent with State law (G.S. 14-306.1A(e) and G.S. 71A-8) and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming ~~activities~~ activities, including those games allowed pursuant to G.S. 14-306.1A(e), in this State as permitted under federal law."

SECTION 5. G.S. 71A-8 reads as rewritten:

"**§ 71A-8. Authorization for federally recognized Indian tribes.**

In recognition of the governmental relationship between the State, federally recognized Indian tribes and the United States, a federally recognized Indian tribe may conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497, that are in accordance with a valid Tribal-State compact executed by the Governor pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under G.S. 14-306.1A(e), shall ~~not be unlawful or~~ be lawful and not against the public policy of the State ~~if the State permits such gaming for any purpose by any person, organization, or entity.~~ if conducted by a federally recognized Indian tribe on federal Indian Trust Lands within the State in accordance with a Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

SECTION 6. G.S. 14-298 reads as rewritten:

"**§ 14-298. Gaming tables, illegal punchboards, slot machines, and prohibited video game machines to be destroyed by police officers.**

All sheriffs and officers of police are hereby authorized and directed, on information made to them on oath that any gaming table prohibited to be used by G.S. 14-289 through G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game

machine prohibited to be used by G.S. 14-306 or G.S. ~~14-306.1,~~ 14-306.1A is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction. This section does not prohibit any activities which are legally conducted by a federally recognized Indian tribe pursuant to G.S. 14-306.1A(e), 147-12(14), and 71A-8."

SECTION 7. Effective with respect to offenses committed on or after December 1, 2002, G.S. 14-309(b) is repealed.

SECTION 8. G.S. 105-256(d)(1) is repealed, but that repeal does not affect reports for activities prior to December 1, 2003.

SECTION 9. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date but also applies to compacts and amendments thereto executed before that date. If a court of competent jurisdiction in this State issues a stay to prohibit possession or operation of video gaming machines by a federally recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that activity is not allowed on non-Indian lands, this act is suspended and shall not have the force of law until such time as the stay is dissolved or a final order is entered. If a court of competent jurisdiction in this State issues a final order that prohibits the possession or operation of video gaming machines by a federally recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that activity is not allowed on non-Indian lands, this act is void.

§ 14-306. Slot machine or device defined.

(a) Any machine, apparatus or device is a slot machine or device within the provisions of G.S. 14-296 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or other object, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or any other machine or device designed and manufactured primarily for use in connection with gambling and which machine or device is classified by the United States as requiring a federal gaming device tax stamp under applicable provisions of the Internal Revenue Code. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies.

(b) The definition contained in subsection (a) of this section and G.S. 14-296, 14-301, 14-302, and 14-305 does not include coin-operated machines, video games, pinball machines, and other computer, electronic or mechanical devices that are operated and played for amusement, that involve the use of skill or dexterity to solve problems or tasks or to make varying scores or tallies and that:

(1) Do not emit, issue, display, print out, or otherwise record any receipt, paper, coupon, token, or other form of record which is capable of being redeemed, exchanged, or repurchased for cash, cash equivalent, or prizes, or award free replays; or

(2) In actual operation, limit to eight the number of accumulated credits or replays that may be played at one time and which may award free replays or paper coupons that may be exchanged for prizes or merchandise with a value not exceeding ten dollars ($10.00), but may not be exchanged or converted to money.

(c) Any video machine, the operation of which is made lawful by subsection (b)(2) of this section, shall have affixed to it in view of the player a sticker informing that person that it is a criminal offense with the potential of imprisonment to pay more than that which is allowed by law. In addition, if the machine has an attract chip which allows programming, the static display shall contain the same message.

(d) The exception in subsection (b)(2) of this section does not apply to any machine that pays off in cash. The exemption in subsection (b)(2) of this section does not apply where the prizes, merchandise, credits, or replays are (i) repurchased for cash or rewarded by cash, (ii) exchanged for merchandise of a value of more than ten dollars ($10.00), or (iii) where there is a cash payout of any kind, by the person operating or managing the machine or the premises, or any agent or employee of that person. It is also a criminal offense, punishable under G.S. 14-309, for the person making the unlawful payout to the player of the machine to violate this section, in addition to any other person whose conduct may be unlawful. (1937, c. 196, s. 3; 1967, c. 1219; 1977, c. 837; 1985, c. 644; 1989, c. 406, s. 1; 1993, c. 366, s. 1; 2000-151, s. 4.)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-15-03 PM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TOMMY HARRELSON	LOBBYIST
Peg Dorer	Conference of DAs
Frank Meloches	Intern / Sen Horton
Jim Ahler	NC ASSN. of CLTS
Sam Johnson	ATTY
Zeb Alley	Alley Assoc.
JOHN WITHROW	NC STATEWATCH
Lee Mandell	NCLM
Scott Plotkin	Dept Sec Of
Hubert Tilson	NCIA
BILL HAGE	JORDAN PRICE

J-1
committee

Visitor Sign-In

Name	Firm or Agency
Kimberly Hunter	
Brea Wilkerson	
Blu Scoggin	KCCH
[illegible]	SA
Michelle Frazier	NC Bar Ass'n
[illegible]	Household
Chad Essick	Edmisten & Webb
[illegible]	NCIA
[illegible]	NCMA
Bruce Thompson	Parker Poe
Marc Finlayson	Finlayson Consulting, LLC
[illegible]	NC Fraternal Council

VISITOR REGISTRATION SHEET

J-1 Committee — 4-15-03 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Camille Stell	Kelly
Kent Merton	Alley Associates, Inc.
Will Polk	NCAT-14 Ga.
[illegible]	"
Harlan Montgomery	SOS
Karl Pallo	NCATL
[illegible] Taylor	NCATL
Nancy Thompson	NCIC
[illegible] Fuller	NCO
Danny Lickey	FTS
Dina DiMaio	NCBA

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-15-03 pm — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dallas Baker	Intern - Sen. Gulley
Marsha Tomyn Hostler	NCCASA
Joanne Stevens	NCCASA
Anne Winn	NCCADV
Beth Froehling	NCCADV
Stacy Flannery	NCHCFA
Lockhart Taylor	NC ESC
David Clegg	NCESC
[illegible]	[illegible]
Amy Martinez	N&O
Kim Hibbard	NCLM
Paul Meyer	NCACC

J-1

Committee

Visitor Sign-In

Name	Firm or Agency
Rob Schofield	NC Justice Center

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 6

Short Title:	Ban Video Poker/All But Reservations.	(Public)
Sponsors:	Senators Albertson; Allran, Blake, Brock, Carpenter, Clodfelter, Dalton, Dannelly, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Holloman, Horton, Jenkins, Kinnaird, Lucas, Malone, Metcalf, Moore, Purcell, Rand, Soles, Swindell, Thomas, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A VALID TRIBAL-STATE COMPACT.

Whereas, the State of North Carolina desires to clearly set forth its policy against commercial forms of gaming; and

Whereas, the State of North Carolina desires to recognize the unique relationship between it and the federally recognized Indian tribe within the State; and

Whereas, the State of North Carolina desires to make it clear that it does not consider the activities of the Eastern Band of Cherokee Indians conducted pursuant to the Compact between it and the Eastern Band of Cherokee Indians to be commercial gaming because the Federal Indian Gaming Regulatory Act restricts the use of proceeds from gaming operations conducted by federally recognized Indian tribes to governmental services and activities that further the self-determination of the tribe; and

Whereas, the State of North Carolina desires to reaffirm that all activities conducted pursuant to such Compact or any amendment thereto are not commercial gaming and that same are lawful and not against the public policy of the State of North Carolina; and

Whereas, the State of North Carolina recognizes the tribe's substantial capital investment in reliance on the Compact, the payments made by the tribe pursuant to the Compact and creation of jobs and other positive impacts the tribe's activities have brought to the entire economy of Western North Carolina; and

Whereas, the State through this legislation intends to make it clear that the State will honor its commitments under the Compact and amendments, to further express its legislative intent to fully recognize the rights of the tribe in its special

sovereign governmental authority to conduct gaming on tribal lands, and to express the intent of the State to recognize as lawful, on tribal lands, all gaming activities conducted by the tribe pursuant to the approved Tribal-State Compact as same may from time to time be amended by the tribe and the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-306.1 is repealed.

SECTION 2. Part 1 of Article 37 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

(a) Ban on Machines. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any video gaming machine as defined in subsection (b) of this section, except for the exemption for a federally recognized Indian tribe under subsection (e) of this section for whom it shall be lawful to operate and possess machines as listed in subsection (b) of this section if conducted in accordance with an approved Class III Tribal-State Compact as provided in G.S. 147-12(14) and G.S. 71A-8.

(b) Definitions. – As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as by way of illustration:

(1) A video poker game or any other kind of video playing card game.
(2) A video bingo game.
(3) A video craps game.
(4) A video keno game.
(5) A video lotto game.
(6) Eight liner.
(7) Pot-of-gold.
(8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin, token, or use of any credit card, debit card, or any other method that requires payment to activate play of any of the games listed in this subsection. The enumeration of games in the list in this subsection does not authorize the possession or operation of such game if it is otherwise prohibited by law.

For the purpose of this section, a video gaming machine includes those that are within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in accordance with an approved Class III Tribal-State Compact as provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video gaming machine does not include those that are within the scope of the exclusion provided in G.S. 14-306(b)(1).

(c) Exemption for Certain Machines. – This section shall not apply to assemblers, repairers, manufacturers, and transporters of video gaming machines who assemble, repair, manufacture, and transport them for sale in another state as long as the machines, while located in this State, cannot be used to play the prohibited games, and

does not apply to those who assemble, repair, manufacture, and sell such machines for use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

(d) Ban on Warehousing. – It is unlawful to warehouse any video gaming machine except in conjunction with the permitted assembly, repair, manufacture, and transportation of such machines under subsection (c) of this section.

(e) Exemption for Activities Under IGRA. – This section does not make any activities of a federally recognized Indian Tribe unlawful or against public policy, which are lawful for any federally recognized Indian tribe under the Indian Gaming Regulatory Act, Public Law 100-497. Notwithstanding any other prohibitions in State law, the form of Class III gaming otherwise prohibited by subsections (a) through (d) of this section may be legally conducted on Indian lands which are held in trust by the United States Government for and on behalf of federally recognized Indian tribes if conducted in accordance with an approved Class III Tribal-State Gaming Compact."

SECTION 3. G.S. 14-306.2 reads as rewritten:

"**§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.**

A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes for the purposes of G.S. 18B-1005(a)(3)."

SECTION 4. G.S. 147-12(14) reads as rewritten:

"(14) ~~To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the ~~State~~ State, consistent with State law (G.S. 14-306.1A(e) and G.S.71A-8) and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming ~~activities~~ activities, including those games allowed pursuant to G.S. 14-306.1A(e), in this State as permitted under federal law."

SECTION 5. G.S. 71A-8 reads as rewritten:

"**§ 71A-8. Authorization for federally recognized Indian tribes.**

In recognition of the governmental relationship between the State, federally recognized Indian tribes and the United States, a federally recognized Indian tribe may conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497, that are in accordance with a valid Tribal-State compact executed by the Governor pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under G.S. 14-306.1A(e), shall ~~not be unlawful or~~ be lawful and not against the public policy of the State ~~if the State permits such gaming for any purpose by any person, organization, or entity.~~ if conducted by a federally recognized Indian tribe on federal Indian Trust Lands in accordance with a Tribal-State Gaming Compact."

SECTION 6. G.S. 14-298 reads as rewritten:

"**§ 14-298. Gaming tables, illegal punchboards, slot machines, and prohibited video game machines to be destroyed by police officers.**

All sheriffs and officers of police are hereby authorized and directed, on information made to them on oath that any gaming table prohibited to be used by G.S. 14-289

through G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine prohibited to be used by G.S. 14-306 or G.S. ~~14-306.1,~~ 14-306.1A is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction. This section does not prohibit any activities which are legally conducted by a federally recognized Indian tribe pursuant to G.S. 14-306.1A(e), 147-12(14), and 71A-8."

SECTION 7. Effective with respect to offenses committed on or after December 1, 2002, G.S. 14-309(b) is repealed.

SECTION 8. G.S. 105-256(d)(1) is repealed, but that repeal does not affect reports for activities prior to December 1, 2003.

SECTION 9. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date but also applies to compacts and amendments thereto executed before that date, but if this act is held by a court of competent jurisdiction to prohibit possession or operation of video gaming machines by a federally recognized Indian tribe because that activity is not allowed elsewhere, this act is void.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 19

Short Title:	Township ABC Elections.	(Public)
Sponsors:	Senators Albertson; Blake and Rand.	
Referred to:	Judiciary I.	

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT CERTAIN TOWNSHIP ABC ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-600(f) reads as rewritten:

"(f) Township Elections. – An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

(3) A county, bordering on a county eligible for township elections pursuant to subdivision (1) of this subsection, where the sales of alcoholic beverages are not authorized countywide and where six municipalities have authorized the sale of alcoholic beverages and where one municipality approved alcoholic beverage control stores but they are currently out of business.

In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B-602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The county board of commissioners in any county authorized to hold township elections pursuant to subdivision (3) of this subsection may establish a different process under which the residents of townships in that county may petition the board to call for the township elections. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 776

Short Title:	Workers' Comp/Definition of Employee.	(Public)
Sponsors:	Senators Dalton, Clodfelter; Ballantine, Bingham, Hartsell, Hoyle, Lucas, Smith, and Stevens.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an

emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term 'employee' shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

'Employee' shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

'Employee' shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, 'authorized pickup firefighter' means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

'Employee' shall not include any person performing services in the delivery or distribution of newspapers or shopping news, unless the delivery or distribution is to any point for subsequent delivery or distribution. 'Employee' shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person, regardless of whether the person is guaranteed an amount of compensation for the service or is entitled to be credited for the amount the person had been charged for the unsold newspapers or magazines that are returned."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 629
PROPOSED COMMITTEE SUBSTITUTE S629-PCS85216-RU-18

Short Title: Clarify Subordination Agreement Requirements. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.6. Subordination agreements.**

(a) A written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms. For purposes of this section, an "interest in real property" shall include all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.

(b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.

(c) For purposes of G.S. 1-47, a commitment or agreement described in subsection (a) of this section is deemed a conveyance of an interest in real property.

(d) The section is not exclusive. No agreement that is otherwise valid shall be invalidated by failure to comply with the provisions of this section."

SECTION 2. This act becomes effective October 1, 2003, and applies to subordination agreements filed or recorded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 629

Short Title:	State Banking Laws.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Rules and Operations of the Senate.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT RELATING TO THE STATE'S BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to the State's banking laws.

SECTION 2. This act is effective when it becomes law.

SENATE BILL 629:
Clarify Subordination Agreement Requirements.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 16, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S629-CSRU-18		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 629 defines the requirements for valid subordination agreements to add clarity to the law.***

CURRENT LAW: A subordination agreement is an agreement between two or more parties where the party with an interest in property (such as lien or mortgage) agrees to allow another interest in property with a lower priority (a mortgage on the same property recorded later in time) to have priority for collection purposes over the earlier acquired interest. Current law governing contracts has generally been applied to subordination agreements in NC. But recent court cases have added additional formalistic requirements to what is required for a valid subordination agreement.

BILL ANALYSIS: Section 1 of the bill adds a new section G.S. 39-6.6 to Article 1 of Chapter 39.

Subsection (a) sets out that a subordination agreement shall be given effect in accordance with its terms and does not require that any of the financial terms of the interest in real property be included. This subsection also makes clear that subordination agreements also apply to statutory liens and judgments, not just written interests in land.

Subsection (b) states that a trustee does not need to sign a subordination agreement unless the deed of trust specifically requires.

Subsection (c) clarifies that a subordination agreement is an interest in real property to which the 10-year statute of limitation under G.S. 1-47 applies.

Subsection (d) provides that this section is not exclusive and that no agreement that is otherwise valid is invalid because it fails to comply with the provisions of this section.

EFFECTIVE DATE: The bill becomes effective October 1, 2003 and applies to subordination agreements filed or recorded on or after that date.

---

§ 1-47. Ten years.

Within ten years an action –

....

(2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

S629-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 315
PROPOSED COMMITTEE SUBSTITUTE S315-PCS85212-RR-12

Short Title: Minor's Entertainment Contracts. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT RELATING TO CONTRACTS OF MINORS FOR ARTISTIC OR CREATIVE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 48A of the General Statutes is amended by designating the existing Chapter as Article 1, to be entitled "Age of Majority", and by adding a new Article to read:

"Article 2.

"Certain Contracts of Minors.

"**§ 48A-11. Applicability.**

This Article applies to the following contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2004:

(1) A contract pursuant to which a person is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company). 'Artistic or creative services' includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(2) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now

known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.

(3) A contract pursuant to which a person is employed or agrees to render services as a participant or player in a sport.

(4) Where a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one or more performers for a fee (casting agency), the agency or service shall be considered the minor's employer for the purposes of this Article.

"**§ 48A-12. No disaffirmance if approved by superior court.**

(a) A contract, otherwise valid, of a type described in G.S. 48A-11, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this State for the transaction of business.

(b) Approval of the court may be given on petition of any party to the contract, after such reasonable notice to all other parties to the contract as is fixed by the court, with opportunity to such other parties to appear and be heard.

(c) Approval of the court given under this section extends to the whole of the contract and all of its terms and provisions, including, but not limited to, any optional or conditional provisions contained in the contract for extension, prolongation, or termination of the term of the contract.

(d) For the purposes of any proceeding under this Article, a parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time of the proceeding shall be considered the minor's guardian ad litem for the proceeding, unless the court shall determine that appointment of a different individual as guardian ad litem is required in the best interests of the minor.

"**§ 48A-12.1. Copies of certain documents to be provided.**

A parent or guardian, as the case may be, entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in G.S. 48A-11 shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

"**§ 48A-13. Financial safeguards in court orders approving contracts.**

(a) Notwithstanding any other statute, in an order approving a minor's contract of a type described in G.S. 48A-11, the court shall require that fifteen percent (15%) of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14. The court may also require that more than fifteen percent (15%) of the minor's gross earnings be set aside in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14, upon request of the minor's parent or legal guardian, or the minor, through his or her guardian ad litem.

(b) The court shall require that at least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time the order is issued be appointed as trustee of the funds ordered to be set aside in trust for the benefit of the minor, unless the court shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(c) The trustee or trustees of the funds ordered to be set aside in trust shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to G.S. 48A-14(c).

(d) The minor's employer shall deposit or disburse the funds as required by the order within 15 business days of receiving the order and receiving the trustee's statement pursuant to G.S. 48A-14 and thereafter as funds might be received. Notwithstanding any other statute, pending receipt of the trustee's statement, the minor's employer shall hold for the benefit of the minor the percentage ordered by the court of the minor's gross earnings pursuant to the contract.

(e) When making the initial deposit of funds pursuant to the order, the minor's employer shall provide the financial institution with a copy of the order.

(f) Once the minor's employer deposits the set-aside funds pursuant to G.S. 48A-14, in trust, in an account or other savings plan, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with G.S. 28A-21-1, et seq.

(g) The court shall have continuing jurisdiction over the trust established pursuant to the order and may at any time, upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(h) The trustee or trustees of the funds ordered to be set aside shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside the funds in accordance with the order, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to subsection (g) of this section amending or terminating the employer's obligations under the original order. The written notification shall include the information set forth in subsection (c) of this section and shall be accompanied by a true and accurate photocopy of the new or amended order.

"**§ 48A-13.1. Financial safeguards when no court order.**

(a) Notwithstanding any other statute, for any minor's contract of a type described in G.S. 48A-11 that is not being submitted for approval by the court pursuant

to G.S. 48A-12, or for which the court has issued a final order denying approval, fifteen percent (15%) of the minor's gross earnings pursuant to the contract shall be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(b) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to G.S. 48A-14(c) and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(c) The minor's employer shall deposit fifteen percent (15%) of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to G.S. 48A-14(c), or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract, and thereafter as funds might be received. Notwithstanding any other statute, pending receipt of the trustee's statement or the final court order, the minor's employer shall hold for the benefit of the minor the fifteen percent (15%) of the minor's gross earnings pursuant to the contract.

(d) Once the minor's employer deposits the set-aside funds in trust, in an account or other savings plan pursuant to G.S. 48A-14, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with G.S. 28A-21-1, et seq.

(e) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(f) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended

order issued pursuant to subsection (e) of this section amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to subdivision (c) of G.S. 48A-14, or a true and accurate photocopy of the new or amended order.

(g) Where a parent or guardian, as the case may be, is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in G.S. 48A-11, the relationship between the parent or guardian, as the case may be, and the minor is a fiduciary relationship that is governed by the law of trusts, whether or not a court has issued a formal order to that effect. The parent or guardian, as the case may be, acting in his or her fiduciary relationship, shall, with the earnings and accumulations of the minor under the contract, pay all liabilities incurred by the minor under the contract, including, but not limited to, payments for taxes on all earnings, including taxes on the amounts set aside under this section or G.S. 48A-13 and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subsection shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

(h) With respect to contracts pursuant to which a person is employed to render services as a musician, singer, songwriter, musical producer, or arranger only, "gross earnings" for purposes of this Article means the amount paid directly to the minor pursuant to the contract, including the payment of any advances to the minor pursuant to the contract, but excluding deductions to offset those advances or other expenses incurred by the employer pursuant to the contract.

"**§ 48A-14. Trust to be established.**

(a) The trustee or trustees shall establish a trust pursuant to this section at a bank, savings and loan institution, credit union, brokerage firm, or company registered under the Investment Company Act of 1940, unless a similar trust has been previously established, for the purpose of preserving for the benefit of the minor the portion of the minor's gross earnings pursuant to G.S. 48A-13(a) or pursuant to G.S. 48A-13.1(a). The trustee or trustees shall establish the trust pursuant to this section within seven business days after the minor's contract is signed by the minor and the employer.

(b) Except as otherwise provided in this section, prior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation of the minor under G.S. 7B-3500, et seq., no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the superior court pursuant to G.S. 48A-13(g) or G.S. 48A-13.1(e). Upon reaching the age of 18 years, the beneficiary may withdraw the funds on deposit in trust only after providing a certified copy of the beneficiary's birth certificate to the financial institution where the trust is located.

(c) The trustee or trustees shall, within 10 business days after the minor's contract is signed by the minor and the employer, prepare a written statement under penalty of perjury that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional

information needed by the minor's employer to deposit into the account the portion of the minor's gross earnings prescribed by G.S. 48A-13(a) or G.S. 48A-13.1(a). The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.

(d) If the trust is established in the United States, it shall be established either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. If the trust is established outside the United States, the financial institution shall be a first-class international bank. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to ensure that the funds remain in trust, in an account or other savings plan, in a financial institution insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.

(e) Upon application by the trustee or trustees to the financial institution or company where the trust is held, the trust funds may be handled by the trustee or trustees in any of the following methods:

(1) The trustee or trustees may transfer funds to another account or other savings plan at the same financial institution or company, provided that the funds transferred shall continue to be held in trust and subject to this section.

(2) The trustee or trustees may transfer funds to another financial institution or company, provided that the funds transferred shall continue to be held in trust and subject to this Article and that the trustee or trustees have provided written notification to the financial institution or company to which the funds will be transferred that the funds are subject to this section and written notice of the requirements of this Article.

(3) The trustee or trustees may use all or a part of the funds to purchase, in the name of and for the benefit of the minor:

a. Investment funds offered by a company registered under the Investment Company Act of 1940, provided that if the underlying investments are equity securities, the investment fund is a broad-based index fund or invests broadly across the domestic or a foreign regional economy, is not a sector fund, and has assets under management of at least two hundred fifty million dollars ($250,000,000); or

b. Government securities and bonds, certificates of deposit, money market instruments, money market accounts, or mutual funds investing solely in those government securities and bonds,

certificates, instruments, and accounts that are available at the financial institution where the trust fund or other savings plan is held, provided that the funds remain in trust at a financial institution insured by the FDIC, SIPC, or NCUSIF if within the United States or maintained in a first-class international bank if not within the United States; provided that those purchases have a maturity date on or before the date upon which the minor will attain the age of 18 years, and provided further that any proceeds accruing from those purchases be redeposited into that account or accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

"**§ 48A-15. Talent agency contracts.**

(a) As used in this Article, 'talent agency' means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

(b) As used in this Article, 'artists' means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

"**§ 48A-16. Disaffirmance of talent agency contracts.**

A minor cannot disaffirm a contract, otherwise valid, entered into during minority, either during the actual minority of the minor entering into such contract or at any time thereafter, with a talent agency as defined in G.S. 48A-15, to secure engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer, where the contract has been approved by the superior court of the county where the minor resides or is employed.

Such approval may be given by the superior court on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 315

Short Title:	Minor's Entertainment Contracts.	(Public)
Sponsors:	Senator Horton.	
Referred to:	Judiciary I.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT RELATING TO CONTRACTS OF MINORS FOR ARTISTIC OR CREATIVE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 48A of the General Statutes is amended by designating the existing Chapter as Article 1, to be entitled "Age of Majority", and by adding a new Article to read:

"Article 2.

"Certain Contracts of Minors.

"**§ 48A-11. Applicability.**

This Article applies to the following contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2004:

(1) A contract pursuant to which a person is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company). "Artistic or creative services" includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(2) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.

(3) A contract pursuant to which a person is employed or agrees to render services as a participant or player in a sport.

(4) Where a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one or more performers for a fee (casting agency), the agency or service shall be considered the minor's employer for the purposes of this Article.

"**§ 48A-12. No disaffirmance if approved by superior court.**

(a) A contract, otherwise valid, of a type described in G.S. 48A-11, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this State for the transaction of business.

(b) Approval of the court may be given on petition of any party to the contract, after such reasonable notice to all other parties to the contract as is fixed by the court, with opportunity to such other parties to appear and be heard.

(c) Approval of the court given under this section extends to the whole of the contract and all of its terms and provisions, including, but not limited to, any optional or conditional provisions contained in the contract for extension, prolongation, or termination of the term of the contract.

(d) For the purposes of any proceeding under this Article, a parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time of the proceeding shall be considered the minor's guardian ad litem for the proceeding, unless the court shall determine that appointment of a different individual as guardian ad litem is required in the best interests of the minor.

"**§ 48A-12.1. Copies of certain documents to be provided.**

A parent or guardian, as the case may be, entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in G.S. 48A-11 shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

"**§ 48A-13. Financial safeguards in court orders approving contracts.**

(a) Notwithstanding any other statute, in an order approving a minor's contract of a type described in G.S. 48A-11, the court shall require that fifteen percent (15%) of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14. The court may also require that more than fifteen percent (15%) of the minor's gross earnings be set aside in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14, upon request of the minor's parent or legal guardian, or the minor, through his or her guardian ad litem.

(b) The court shall require that at least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time the

order is issued be appointed as trustee of the funds ordered to be set aside in trust for the benefit of the minor, unless the court shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(c) The trustee or trustees of the funds ordered to be set aside in trust shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to G.S. 48A-14(c).

(d) The minor's employer shall deposit or disburse the funds as required by the order within 15 business days of receiving the order and receiving the trustee's statement pursuant to G.S. 48A-14. Notwithstanding any other statute, pending receipt of the trustee's statement, the minor's employer shall hold for the benefit of the minor the percentage ordered by the court of the minor's gross earnings pursuant to the contract.

(e) When making the initial deposit of funds pursuant to the order, the minor's employer shall provide the financial institution with a copy of the order.

(f) Once the minor's employer deposits the set-aside funds pursuant to G.S. 48A-14, in trust, in an account or other savings plan, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(g) The court shall have continuing jurisdiction over the trust established pursuant to the order and may at any time, upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(h) The trustee or trustees of the funds ordered to be set aside shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside the funds in accordance with the order, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to subsection (g) of this section amending or terminating the employer's obligations under the original order. The written notification shall include the information set forth in subsection (c) of this section and shall be accompanied by a true and accurate photocopy of the new or amended order.

"**§ 48A-13.1. Financial safeguards when no court order.**

(a) Notwithstanding any other statute, for any minor's contract of a type described in G.S. 48A-11 that is not being submitted for approval by the court pursuant to G.S. 48A-12, or for which the court has issued a final order denying approval, fifteen percent (15%) of the minor's gross earnings pursuant to the contract shall be set aside by

the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(b) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to G.S. 48A-14(c) and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(c) The minor's employer shall deposit fifteen percent (15%) of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to G.S. 48A-14(c), or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract. Notwithstanding any other statute, pending receipt of the trustee's statement or the final court order, the minor's employer shall hold for the benefit of the minor the fifteen percent (15%) of the minor's gross earnings pursuant to the contract.

(d) Once the minor's employer deposits the set-aside funds in trust, in an account or other savings plan pursuant to G.S. 48A-14, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(e) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(f) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to subsection (e) of this section amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to

subdivision (c) of G.S. 48A-14, or a true and accurate photocopy of the new or amended order.

(g) Where a parent or guardian, as the case may be, is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in G.S. 48A-11, the relationship between the parent or guardian, as the case may be, and the minor is a fiduciary relationship that is governed by the law of trusts, whether or not a court has issued a formal order to that effect. The parent or guardian, as the case may be, acting in his or her fiduciary relationship, shall, with the earnings and accumulations of the minor under the contract, pay all liabilities incurred by the minor under the contract, including, but not limited to, payments for taxes on all earnings, including taxes on the amounts set aside under this section or G.S. 48A-13 and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subsection shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

(h) With respect to contracts pursuant to which a person is employed to render services as a musician, singer, songwriter, musical producer, or arranger only, "gross earnings" for purposes of this Article means the amount paid directly to the minor pursuant to the contract, including the payment of any advances to the minor pursuant to the contract, but excluding deductions to offset those advances or other expenses incurred by the employer pursuant to the contract.

"**§ 48A-14. Trust to be established.**

(a) The trustee or trustees shall establish a trust pursuant to this section at a bank, savings and loan institution, credit union, brokerage firm, or company registered under the Investment Company Act of 1940, unless a similar trust has been previously established, for the purpose of preserving for the benefit of the minor the portion of the minor's gross earnings pursuant to G.S. 48A-13(a) or pursuant to G.S. 48A-13.1(a). The trustee or trustees shall establish the trust pursuant to this section within seven business days after the minor's contract is signed by the minor and the employer.

(b) Except as otherwise provided in this section, prior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation of the minor under G.S. 7B-3504, no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the superior court pursuant to G.S. 48A-13(g) or G.S. 48A-13.1(e). Upon reaching the age of 18 years, the beneficiary may withdraw the funds on deposit in trust only after providing a certified copy of the beneficiary's birth certificate to the financial institution where the trust is located.

(c) The trustee or trustees shall, within 10 business days after the minor's contract is signed by the minor and the employer, prepare a written statement under penalty of perjury that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional information needed by the minor's employer to deposit into the account the portion of the minor's gross earnings prescribed by G.S. 48A-13(a) or G.S. 48A-13.1(a). The trustee or trustees shall attach to the written statement a true and accurate photocopy of

any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.

(d) If the trust is established in the United States, it shall be established either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. If the trust is established outside the United States, the financial institution shall be a first-class international bank. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to ensure that the funds remain in trust, in an account or other savings plan, in a financial institution insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.

(e) Upon application by the trustee or trustees to the financial institution or company where the trust is held, the trust funds may be handled by the trustee or trustees in any of the following methods:

(1) The trustee or trustees may transfer funds to another account or other savings plan at the same financial institution or company, provided that the funds transferred shall continue to be held in trust and subject to this section.

(2) The trustee or trustees may transfer funds to another financial institution or company, provided that the funds transferred shall continue to be held in trust and subject to this Article and that the trustee or trustees have provided written notification to the financial institution or company to which the funds will be transferred that the funds are subject to this section and written notice of the requirements of this Article.

(3) The trustee or trustees may use all or a part of the funds to purchase, in the name of and for the benefit of the minor:

a. Investment funds offered by a company registered under the Investment Company Act of 1940, provided that if the underlying investments are equity securities, the investment fund is a broad-based index fund or invests broadly across the domestic or a foreign regional economy, is not a sector fund, and has assets under management of at least two hundred fifty million dollars ($250,000,000); or

b. Government securities and bonds, certificates of deposit, money market instruments, money market accounts, or mutual funds investing solely in those government securities and bonds, certificates, instruments, and accounts that are available at the financial institution where the trust fund or other savings plan is held, provided that the funds remain in trust at a financial

institution insured by the FDIC, SIPC, or NCUSIF if within the United States or maintained in a first-class international bank if not within the United States; provided that those purchases have a maturity date on or before the date upon which the minor will attain the age of 18 years, and provided further that any proceeds accruing from those purchases be redeposited into that account or accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

"**§ 48A-15. Talent agency contracts.**

(a) "Talent agency" means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this Article. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

(b) "Artists" means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

"**§ 48A-16. Disaffirmance of talent agency contracts.**

A minor cannot disaffirm a contract, otherwise valid, entered into during minority, either during the actual minority of the minor entering into such contract or at any time thereafter, with a duly licensed talent agency as defined in G.S. 48A-15, to secure engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer, the blank form of which has been approved by the Commissioner of Labor, where such contract has been approved by the superior court of the county where such minor resides or is employed.

Such approval may be given by the superior court on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 315:
Minor's Entertainment Contracts.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Horton
Date:	April 16, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 315 would give North Carolina a statue similar to California's recently amended "Jackie Coogan Law" to protect the earnings of underage entertainment and sports performers until they reach adulthood. It would require that 15% of the earnings of the underage performer be placed in a trust. The law would have a mechanism for court approval of contracts with underage performers. If the contract is court-approved, the performer would not be able to disaffirm the contract.***

CURRENT LAW: Current North Carolina law has no specific protection for child performers. A contract with a minor can be voided by the minor.

BILL ANALYSIS:

15% of Earnings in Trust. Senate Bill 315 would require that the earnings of minor performers be protected by the mandatory set-aside of 15% of earnings to go into a trust account to be held until the minor reaches 18 years old. *G.S. 48A-14.* The custodial parent or guardian of the minor shall be at least one of the trustees of the trust, unless a different trustee is appointed by a court upon motion of one of several people. *G.S. 48A-13 and 48A-13.1.*

The Contracts to Which It Applies. *G.S. 48A-11.* The 15%-in-trust rule is applied to the following contracts involving a minor performer:

- Contracts in which the minor is employed or retained to perform one of several artistic services.
- Contracts in which the artistic property of the minor, including the minor's likeness, is purchased, leased, or otherwise acquired.
- Contracts in which the minor is engaged as a participant or player in a sport.
- Contracts in which the minor renders services as an "extra" through an agency which provides such performers for a fee.

Contracts -- Court-Approved and Otherwise. The bill provides for approval of a covered contract by a Superior Court. If the contract is court-approved, person contracting with the minor gets the advantage that the minor cannot disaffirm the contract. *G.S. 48A-12.* Arguably the minor could do so otherwise, because a minor is not competent to make a contract. But even if the contract is not court-approved, the bill would require the creation of a trust and the deposit of the 15% of the minor's gross earnings into the trust. *G.S. 48A-13.1.*

Talent Agency Contracts. The bill provides for court approval of contracts between a minor artist and a talent agency, whose role is to procure employment or engagements for the artist. If the court approves the contract, the minor cannot disaffirm. *G.S. 48A-16 and -16.*

BACKGROUND: California's legislation to protect the earnings of minor entertainers dates from the 1930s. Jackie Coogan, an enormously popular child film star of the 1920s silent era, gained attention after he turned 21 by suing his mother and step-father for the $4 million he had earned as a child. Under California law at the time, he had few rights and was awarded only $126,000. The public uproar over the case resulted in California legislation in 1939 to provide for court approval of contracts between employers and minor entertainers. After years of advocacy by such organizations as the Screen Actors Guild, the California legislature in the late 1990s amended the Coogan Law to require a 15% set-aside of all minor entertainment and sports contracts, not just those covered by court-approved contracts. That act also changed the California community-property law so the minor's earners would be the separate property of the minor, rather than the property of the parents. N.C. is not a community-property state.

(Coogan, later in his career, played "Uncle Fester" on the TV series "The Addams Family.")

VISITOR REGISTRATION SHEET

J-1 Committee — 4-16-03 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
RON LIEN	2585 STRICKLAND BRIDGE RD FAY NC 28306
Ken Melton	Alley Associates
Tim Minn	NC Home Builders
JOHN BUSSIAN	NC Press Assn.
BILL HORNER	" " "
Dick Taylor	NCAA
Kim Hunter	—
Brea Wilkerson	—
Beau Mills	NCCM
ANN LOVE	DVHS
R. Paul Williams	NCHBA

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-16-03 AM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chad W. Essick	Edmisten + Webb
Chris Nichols	Hunton + Williams
CASANDRA SKINNER	CCPS
Stacy Flannery	NCHEFA
RJP	NFB
Elizabeth Dalton	Bone & Assoc
Roger Bone	" "
Peg Dorer	NC Conference of DAs
Connie Winner	Atty
Bill Wilson	NC Academy of Trial Lawyers
R. Thomas Bradlove	Vance Co. Sheriff's office

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-16-03 AM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry W. Jones	Franklin County Sheriff's Office
David T. Smith	Sheriff Granville Co.
Lillie E. Cox	937 TIMBERLAKE DR FAYETTEVILLE
Monica Johnson Hosler	NCCASA
Joanne Stevens	NCCASA
Camille Stell	Kennedy Covington
Rev. MARK CREECH	CAL
LEE McGRAW	Guest
John Rust	NCFPC
Marlowe Foster	Lowe's
FRAN PRESTON	NCRMA
Andoby Ellen	NCRMA

(4)

VISITOR REGISTRATION SHEET

J-1 | 4-16-03 AM

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCRA
Donna Maynard	NC Sheriffs' Assn
JAMEY FLETCHER	WATAUGA CO SHERIFF'S OFFICE
Lt. Chris Boykin	Wilson Co. Sheriff's office
Colleen Kochanek	Hafer & Caldwell, P.A.
Matt Willoughby	NCNR
[signature]	[illegible]
Paul Woolverton	Fayetteville Observer
Ed Brown	Onslow County Sheriff's Office
Sid Causey	New Hanover Co. Sheriff's Office

VISITOR REGISTRATION SHEET

J. T. — 4-16-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN WITHROW	NC STATEWATCH
[signature]	CCPS
Denise Huntley	Sen. Clodfelters intern
PAUL STOCK	NC BANKERS ASSN.
Roy Williams	~~DOC~~ UNC
Chris Vaughn	Carruthers & Roth, P.A.
Litchard Hurley	Sheriff - Randolph County
Ann Fulton	ABC Commission
Jim Fendergraph	Sheriff - Mecklenburg County
CLAYTON SOMERS	ABC Commission
GERRY COHEN	Bill Drafting
[signature]	NC Sheriffs Assn.
[signature]	Sheriff Robeson County
Earl Butler	Sheriff Cumberland Co
[signature]	Sheriff Harnett Co.
Richard H. Webster	Sheriff Chatham County

VISITOR REGISTRATION SHEET

T.C. — 4-16-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Sri	NCRMB

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	April 16, 2003	10 Min After Session	1027 LB

SECOND REVISED NOTICE./ SB1011 ADDED

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-522	Charlotte Photo Speed-Measuring Systems	Sen. Dannelly
•	SB-566	Limit Covenants not to Compete	Sen. Rucho
•	SB-568	Superintendent of Public Instruction Appointed	Sen. Gulley
•	SB-912	Sexual Battery	Sen. Clodfelter
•	SB-1011	Health Care Provider Liens	Sen. Berger

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 16, 2003 p.m

Minutes.

Senator Dan Clodfelter, Chair called the meeting together at 4:25 p.m. with twelve members present. He introduced Pages Thomas Boyd and Roman Do both from Raleigh, NC.

SB 772 (Repeal Plumbing Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Bob Carpenter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Austin Allran explained that the bill would clarify a law enacted in October, 2002, that permits certain retailers of water heaters and heating and air conditioning systems to provide for installation services of the goods sold by licensed contractors, without retailers being licensed as such. See attached Bill Summary for further information. Mr. Tom Tucker with Heating & Plumbing in Charlotte, NC spoke in favor of the bill. Senator Patrick Ballantine moved for a Favorable Report. All members voted yes. Motion carried.

SB-552 (Charlotte Photo Speed-Measuring Systems) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor Senator Charlie Dannelly explained that this act would authorize municipalities with 5000,000 persons or over to enact ordinances allowing photographic speed measuring systems. The systems are designed to enforce traffic sign and signal laws. See attached Bill Summary for further information. Senator Linda Garrou moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Mr. Gerald Stevens, Police Chief from Mecklenburg County spoke on the bill. Officer Charlie Brown from Mecklenburg County spoke on certification of officers. Senator's Patrick Ballantine, Ham Horton, Phillip Berger, Cecil Hargett, David Hoyle, Charlie Dannelly, Steve Metcalf, and Charlie Albertson had questions about the bill. Police chief, Stevens and Senator Clodfelter answered the questions. Senator Berger moved for amendment to the bill. All members voted yes for adoption of the amendment. See attached amendment. Senator Clodfelter stated that the bill would be displaced at this time and the amendment would be rolled into a Committee Substitute. .

SB-566 (Limit Covenants not to Compete) was introduced by Senator Clodfelter. Bill sponsor, Senator Robert Rucho explained that the bill would amend the law to require contracts limiting the right to employment to be in writing and would make any provision

of a broadcast industry employment contract that contains a covenant not to compete void and unenforceable. See attached Bill Summary for further information. Senator's David Hoyle Wib Gulley, Charlie Albertson, Tony Rand, Cecil Hargett had questions. Senator Rucho answered the questions. Mr. Wade Hargrove, Representative for NC Broadcasters Association spoke in opposition of the bill. Mr. Brooks McClinton from News Manage with WINTS spoke on the bill. Ms. Leslie Babac, NC Business & Industry spoke on the bill. Senator Clodfelter said the bill would be displaced at this time. He expressed his thanks to all the speakers.

SB-552 (Photo Speed Measuring Systems) Committee Substitute was reintroduced by Senator Clodfelter. He asked for a vote on the Committee Substitute with Senator Berger's amendment engrossed in it. All members voted yes. Motion carried. Senator Charlie Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-568 (Superintendent of Public Instruction Appointed) was introduced by Senator Clodfelter. Bill sponsor, Senator Wib Gulley explained that the bill would propose to the voters a constitutional amendment to make the State Superintendent of Public Instruction an appointee of the Governor, rather than an elected member of the Council of State. See attached Bill Summary for further information. Senator Wib Gulley proposed an amendment and moved for adoption of the amendment. All voted yes, Motion carried. See attached amendment. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-912 (Sexual Battery) Committee Substitute was introduced by Senator Phillip Berger, Co Chair. Bill sponsor, Senator Dan Clodfelter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained that the bill creates the new criminal offense of sexual battery. See attached Bill Summary. Senator's Tony Rand, and Ham Horton had questions. Staff Attorney, Hal Pell, answered the questions. Senator Clodfelter moved for adoption of amendment. All members voted yes. Motion carried. See attached amendment. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-1011 was not heard.

Being no further business the meeting was adjourned at 5.35 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, April 17, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **6** Ban Video Poker/All But Reservations.

Draft Number:	PCS 40013
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **552** Charlotte Photo Speed-Measuring Systems.

Draft Number:	PCS 35245
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

S.B. **568** Superintendent of Pub. Instruction Appointed.

Draft Number:	PCS 35246
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **912** Sexual Battery.

Draft Number:	PCS 35244
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 21, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **577** Adjust Court Jurisdiction.

Draft Number:	PCS 40020
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **629** State Banking Laws.

Draft Number:	PCS 85216
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **753** Qualifications for Magistrates.

Draft Number:	PCS 40021
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **772** Repeal Plumbing Laws.

Draft Number:	PCS 35247
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 772
PROPOSED COMMITTEE SUBSTITUTE S772-CSRU-19 [v.2]

4/16/2003 4:09:59 PM

Short Title: Clarify Certain Plumbing Laws. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS THAT ALLOWS RETAILERS WHO ARE NOT LICENSED AS PLUMBING, HEATING, OR FIRE SPRINKLER CONTRACTORS TO SELL CERTAIN GOODS AND SERVICES TO BE INSTALLED BY LICENSEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(c) reads as rewritten:

"(c) To Whom Article Applies. – The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of ~~plumbing or heating,~~plumbing, heating or air conditioning, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system. Minor repairs or minor replacements within the meaning of this subsection shall include the replacement of parts in an installed system which do not require any change in energy source, fuel type, or routing or sizing of venting or piping. Parts shall include a compressor, coil, contactor, motor or capacitor."

SECTION 2. G.S. 87-21(i) reads as rewritten:

"(i) The provisions of this Article shall not apply to a retailer, as defined in G.S. 105-164.3(35), who, in the ordinary course of business, enters into a transaction with a buyer in which the retailer of a ~~good and the services necessary for the installation of the good,~~water heater sold for installation in a one- or two-family residential dwelling contracts with a licensee under this Article to provide the installation services ~~if the contract, containing the licensee's license number,~~ for the water heater if the retail sales and installation contract with the buyer is signed by the buyer, the retailer, and the ~~licensee.~~licensee and bears the licensee's license number and telephone number. All

installation services rendered ~~pursuant to this section~~ by the licensee in connection with any such contract must be performed in compliance with all ~~local~~ building code, permit and inspection requirements.

SECTION 3. G.S. 87-21 is amended by adding the following new subsections:

"(j) The provisions of this Article shall not apply to a person primarily engaged in the retail sale of goods and services who contracts for or arranges financing for the sale and installation of a single-family residential heating or cooling system for which a license to install such system is required under this Article, provided all of the following requirements are met:

(1) No contract or proposal for sale or installation may be presented to or signed by the buyer unless either (i) the specifications for and design of the system have been first reviewed and approved by an employee of the retail seller who is licensed under this Article, or (ii) the specifications for and design of the system have been first reviewed and approved by the person licensed under this Article who will install the system, if the installer is not an employee of the retail seller. This subdivision does not prohibit the retailer from providing a written estimate to a potential buyer so long as no contract or proposal for contract is presented or signed prior to the review and approval required by this subsection.

(2) The person installing the system is licensed under this Article.

(3) The contract for sale and for installation is signed by the buyer, by an authorized representative of the retail seller, and by the licensed contractor and contains the contractor's name, license number and telephone number and the license number of the person approving the system design specifications.

(4) Installation services are performed in compliance with all applicable building codes, manufacturer's installation instructions, and permit and inspection requirements.

(5) The retailer provides, in addition to any other warranties it may offer with respect to the system itself, a warranty for a period of at least one-year for any defects in installation.

(k) The provisions of subsections (i) and (j) of this section shall not apply to a system meeting the definition of subsection (a)(11) of this section."

SECTION 3. This act becomes effective July 1, 2003.

SENATE BILL 772:
Clarify Certain Plumbing Laws.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Allran
Date:	April 16, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S772-CSRU-19		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 772 would clarify a law enacted in October, 2002, effective May 1, 2003, that permits certain retailers of water heaters and heating and air conditioning systems to provide for installation services of the goods sold by a licensed plumber or heating and air conditioning contractor, without the retailer being licensed as such.***

CURRENT LAW: Current law says that a retailer who, in the ordinary course of business sells a good and the services for the installation of the good, contracts with a person licensed under the plumbing, heating and fire sprinkler system licensing law to provide the installation services, does not have to be licensed provided that the contract is signed by the buyer, the retailer and the licensee. All services performed have to comply with all local permit and inspection requirements.

BILL ANALYSIS: Section 1 of the bill, amends the law to clarify what constitutes a minor repair or replacement that is exempt from the licensing law. This allows any repair or replacement that does not require changing an energy source, fuel type, or venting or piping to be performed by a non-licensee.

Section 2 amends the law relative to the retail sale of goods and the sale of installation services. G.S. 87-21(i) is amended to limit the law to just the sale and installation of water heaters for one- or two-family residential dwellings. This section further clarifies that all building code requirements must be complied with.

Section 3 adds two new subsections to clarify the law to define when a retailer can contract or arrange financing for the sale and installation of heating or cooling systems in single-family dwellings without the retailer having to be licensed. This exception applies when:

- The specifications and design of the system has been reviewed by a licensee prior to the contract being entered into.
- The installer of the system is a licensee.
- The contract is signed by the buyer, retailer, and licensee of the contractor and the licensee who approved the design.
- Installation is performed in accordance with all building codes, manufacturer's instructions, and permit and inspection requirements.
- The retailer provides at least a one-year warranty on the installation.

This section also makes clear that these exceptions to the licensing statute do not apply to fire sprinkler systems.

EFFECTIVE DATE: The bill becomes effective July 1, 2003.

S772-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 772

Short Title:	Repeal Plumbing Laws.	(Public)
Sponsors:	Senator Allran.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE EXCEPTION TO THE LAW GOVERNING PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS THAT ALLOWS RETAILERS WHO ARE NOT LICENSED AS PLUMBING, HEATING, OR FIRE SPRINKLER CONTRACTORS TO SELL GOODS AND SERVICES TO BE INSTALLED BY LICENSEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(i) is repealed.

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 552
PROPOSED COMMITTEE SUBSTITUTE S552-PCS35245-RK-28

Short Title: Photo Speed-Measuring Systems. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.4. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation clearly stating the manner in which the violation may be challenged. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed-measuring systems.

(f) This section applies only to municipalities with a population of 500,000 or over according to the most recent decennial federal census."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.4 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer who has been certified by the North Carolina Criminal Justice Education and Training Standards Commission under G.S. 17-6(a).

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic

speed-measuring systems as described in G.S. 160A-300.4(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 16, 2003

S. B. No. 552 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS-5552-CSRL-28

Rep.)
) Berger
Sen.)

moves to amend the bill on page 3, line 20

( ) WHICH CHANGES THE TITLE

by deleting the word "officer." and substituting the words "officer who has been certified by the North Carolina Criminal Justice Education and Training Standards Commission ~~as a~~ ~~radar operator~~ under G.S. 17-6(a)."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 552:
Photo Speed-Measuring Systems.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sens. Dannelly and Clodfelter
Date:	April 16, 2003	**Summary by:**	H. Alan Pell
Version:	PCS [s556-csrk-28]		Committee Co-Counsel

SUMMARY: ***This act will authorize municipalities with 500,000 persons or over to enact ordinances allowing photographic speed measuring systems to enforce speeding laws.***

CURRENT LAW: By different statutory provisions, specified municipalities and counties have been authorized to enact ordinances to use traffic control photographic systems. The systems are designed to enforce traffic sign and signal laws (e.g., red light, stop sign).

BILL ANALYSIS:

Section 1: This section

- Defines a "photographic speed-measuring system" and prescribes the standards applicable for its use.
- Requires that the system be monitored by law enforcement personnel, and have appropriate advance warning notices.
- Municipalities are granted the authority to adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 (speed restrictions and speed limits in school zones).
- Provides that a violation shall not be a misdemeanor or infraction.
- Provides that ordinances must allow an owner to furnish evidence that the vehicle was in the care, custody, and control of another person. The owner has 21 days in which to provide the name of the person who did have care, custody, and control of the vehicle, or an affidavit that the vehicle was stolen, or was in the care, custody, and control of the vehicle without the owner's permission.
- A violation is a non-criminal violation, with a civil penalty of $50. No points (per G.S. 20-16(c) or GS. 58-36-65) may be assigned to the owner or driver of the vehicle.
- Provides procedures for notification of the violation, and an additional penalty (not to exceed $50) for failure to pay or respond to the citation within a specified time. The municipality must provide an administrative hearing process; the decision may be reviewed by the superior court. A request for review must be filed within 30 days after the hearing decision.
- After reasonable deduction for administrative costs, the proceeds of the civil penalties must be paid to support traffic safety measures in the jurisdiction using the system.
- The section is only applicable to municipalities with 500,000 persons or over as of the last federal census.

Section 2: The results of the use of the system are admissible in the administrative hearing for the purpose of establishing the vehicle's speed. However, the results are not admissible unless the following standards are met:

- The system was approved by the North Carolina Criminal Justice Education and Training Standards Commission (CJETS Commission).
- The system was calibrated and tested for accuracy by the CJETS Commission and the Secretary of Crime Control and Public Safety.
- The system was monitored by a sworn law enforcement officer at the time the results were obtained.

All systems must be calibrated and tested in accordance with standards established by the CJETS Commission and the Secretary of Crime Control and Public Safety. A written certificate by a certified technician with the CJETS Commission, showing that the system was tested during the required testing period, is competent and prima facie evidence in the administrative hearing as to the calibration and accuracy of the system.

In hearings held pursuant to the authorizing statute, where the results of the system are sought to be admitted, notice shall be taken of the rules approving the system and the procedures for calibration or accuracy testing of the system.

Section 3:

The act amends the statute that describes the powers of the North Carolina Criminal Justice Education and Training Standards Commission. The Commission, in conjunction with the Secretary of Crime Control and Public Safety, is authorized to approve the use of specific models and types of photographic speed-measuring systems.

Section 4: The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 552

Short Title:	Charlotte Photo Speed-Measuring Systems.	(Public)
Sponsors:	Senators Dannelly; and Clodfelter.	
Referred to:	Judiciary I.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the

violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation clearly stating the manner in which the violation may be challenged. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed-measuring systems."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.2 shall be admissible as evidence in a nonjudicial administrative

hearing held pursuant to G.S. 160A-300.2(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. This act is effective when it becomes law.

Frequently Asked Questions

1. Why don't we just deploy more police officers?

The camera is used to supplement limited law enforcement resources. The cost of uniformed officers is extremely high. The camera is much more efficient as it is able to issue tickets at a rate of 1 every .5 seconds whereas a traffic stop by an officer may take 20 minutes or more. Additionally, the offenders are the ones that will pay for the program instead of taxpayers in general.

2. What if drivers start getting tickets for going 1 mph over the speed limit?

The purpose for the speed cameras is to protect the public safety by reducing average speeds and the highest speeds on our roadways. The cameras will still be tested and operated by an officer who will use his or her discretion in setting the threshold speed at which photos are taken. The camera would be set dependent on the speed limit, thoroughfare, weather conditions, and other factors, just as an officer would when operating radar.

3. Doesn't the City of Charlotte just want to raise money for its own coffers?

No. The purpose of the cameras is to protect public safety. Speed is the leading contributing factor in car crashes in Charlotte-Mecklenburg. Speed was responsible for nearly 6606 crashes, nearly 2440 injuries and 19 of 45 traffic fatalities in 2001. The UNC Highway Safety Research Center estimated the cost of speed related crashes in Mecklenburg County to be nearly $300 million.

Speed cameras can help save money by reducing speeds and subsequently reducing crashes, injuries and fatalities in the community. Additionally, written into the legislation is a provision to direct any penalties paid beyond the cost of the running the program to go to the Charlotte-Mecklenburg School system.

4. What about emergency equipment or situations that may have valid reasons for speeding?

Just as with the red light cameras, there will be an appeal process available for drivers that feel they had a good excuse for driving above the speed limit. Drivers will be informed of that process when they receive the citation. Additionally, a police officer will be monitoring cameras and all photographs will be reviewed prior to sending out the citations to try to limit the number of citations being sent in error.

5. Aren't the cameras a violation of privacy?

While this is a country that values personal freedoms and independence there are also acceptable restrictions for the protection of public safety. We know that speed is the

major contributing factor in 20% of crashes and 42% of fatal crashes in Mecklenburg County. Additionally, speed-related crashes resulted in injuries 36% of the time. Cameras have proven to reduce crashes, which ultimately reduce injuries, deaths and costs to society.

6. What if the vehicle owner isn't driving when the car is photographed?

Just as with a parking ticket or a red light running ticket, the citation would be sent to the registered owner of the vehicle. If the vehicle owner was not driving at the time, he or she will be able to appeal the case and provide the name of the person that was driving at the time. Citation recipients will receive clear instructions about how to appeal a ticket.

7. Will this affect driver's license or insurance points?

No. It is a civil penalty like a parking ticket and no points will be assessed against the driver.

8. What about the work load for the District Attorney's Office? Will they be able to keep pace?

Because this is a civil citation with its own appeals process, the DA's Office will not need to be involved in these cases. However, HITS officers and other district officers will continue to focus on traffic safety in order to protect the public. Regular speeding citations will still be written (24,112 in 2000 and 32,758 in 2001) especially in the corridors identified as high risk for speed-related crashes.

9. Will there be a citizen backlash against the cameras?

There will always be individuals that will voice opposition to any regulation but they are usually few in number, although they may be vocal. The majority of citizens in our community support stricter enforcement of speed limits as documented in the Annual Survey conducted by the UNCC Urban Institute. In 1999, 74.2% of those responding indicated that they were in favor of stricter enforcement of speed limits. This number increased in 2000 to 77.5% and in 2001 to 79.2%. It is obvious that speed is perceived as a problem in the community. In addition, several citizens groups have expressed outrage in the last two years over the number of people in our community injured or killed due to speeding on our roadways and the dangerous speeds driven through neighborhoods. This can be seen in the demand for speed bumps, requests for neighborhood radar, placement of yard signs and the involvement of community members in efforts like the Take the Pledge campaign.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 568

Short Title:	Superintendent of Pub. Instruction Appointed.	(Public)
Sponsors:	Senators Gulley; Blake, Carpenter, Hagan, Hartsell, Horton, Hoyle, Jenkins, Kerr, Lucas, Metcalf, Moore, Purcell, Rand, Shaw, Smith, and Weinstein.	
Referred to:	Judiciary I.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AN APPOINTEE OF THE GOVERNOR AND TO MAKE CORRESPONDING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4(2) of Article IX of the North Carolina Constitution reads as rewritten:

"(2) **Superintendent of Public Instruction.** The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. The Superintendent shall be appointed by the Governor."

SECTION 2. Section 7(1) of Article III of the North Carolina Constitution reads as rewritten:

"(1) **Officers.** A Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified."

SECTION 3. G.S. 115C-18 reads as rewritten:

"**§ 115C-18. ~~Election~~ Appointment of Superintendent of Public Instruction.**

The Superintendent of Public Instruction shall be appointed by the Governor. ~~elected by the qualified voters of the State in 1972 and every four years thereafter at the same time and places as members of the General Assembly are elected. His term of office shall be four years and shall commence on the first day of January next after election and continue until his successor is elected and qualified.~~

~~If the office of the Superintendent of Public Instruction is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of North Carolina. When a vacancy occurs in the office and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the occurrence of a vacancy in the office for any of the causes stated herein, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill the vacancy and is qualified.~~

~~The time of the election of the Superintendent of Public Instruction shall be in accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the General Statutes.~~

~~The election, term and induction into office of the Superintendent of Public Instruction shall be in accordance with the provisions of G.S. 147-4.~~"

SECTION 4. G.S. 147-3(c) reads as rewritten:

"(c) The general civil executive officers of this State are as follows:

(1) A Governor;
(2) A Lieutenant Governor;
(3) Private secretary for the Governor;
(4) A Secretary of State;
(5) An Auditor;
(6) A Treasurer;
(7) An Attorney General;
~~(8) A Superintendent of Public Instruction;~~
(9) The members of the Governor's Council;
(10) A Commissioner of Agriculture;
(11) A Commissioner of Labor;
(12) A Commissioner of Insurance."

SECTION 5. G.S. 147-4 reads as rewritten:

"**§ 147-4. Executive officers – election; term; induction into office.**

The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the General

Assembly. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law."

SECTION 6. G.S. 147-11.1 reads as rewritten:

"**§ 147-11.1. Succession to office of Governor; Acting Governor.**

(a) Lieutenant Governor. –

(1) The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(b) President of Senate, Speaker of the House and Other Officers. –

(1) If, by reason of failure to qualify, death, resignation, or removal from office, there is neither a Governor nor a Lieutenant Governor to discharge the powers and duties of the office of Governor, then the President of the Senate shall, upon his resignation as President of the Senate and as Senator, become Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Governor, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative, become Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Governor, shall, upon his resignation of the office which places him in the order of succession, become Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(c) Acting Governor Generally. –

(1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(d) Governor Serving under Subsection (c). – An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If his tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant Governor from the State, then he shall act only until the Governor or Lieutenant Governor returns to the State; and

(2) If his tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant Governor, then he shall act only until the removal of the incapacity of the Governor or Lieutenant Governor.

(e) Officers to Which Subsections (b), (c) and (d) Applicable. – Subsections (b), (c), and (d) of this section shall apply only to such officers as are eligible to the office of Governor under the Constitution of North Carolina, and only to officers who are not under impeachment by the House of Representatives at the time they are to become Governor or Acting Governor.

(f) Compensation of Acting Governor. – During the period that any individual serves as Acting Governor under subsection (c) of this section, his compensation shall be at the rate then provided by law in the case of the Governor."

SECTION 7. G.S. 163-1 is amended by deleting the entries in the table for "Superintendent of Public Instruction".

SECTION 8. G.S. 163-8 reads as rewritten:

"**§ 163-8. Filling vacancies in State executive offices.**

If the office of Governor or Lieutenant Governor shall become vacant, the provisions of G.S. 147-11.1 shall apply. If the office of any of the following officers shall be vacated by death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~

Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that when a vacancy occurs in any of the offices named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section and Article III, Section 7 of the State Constitution, to fill the vacancy and is qualified."

SECTION 9. G.S. 163-278.27(b) reads as rewritten:

"(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, ~~State Superintendent of Public Instruction,~~ State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys of the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside."

SECTION 10. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a statewide general election on November 4, 2003, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments to make the Superintendent of Public Instruction an appointee of the Governor."

SECTION 11. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The Secretary of State shall enroll the amendments so certified among the permanent records of that office. The amendments set out in Sections 1 and 2 of this act shall become effective the earlier of January 1, 2005, and the date that a vacancy occurs in the office of Superintendent of Public Instruction.

SECTION 12. Sections 3 through 9 of this act become effective only if the voters approve the constitutional amendments set out in Sections 1 and 2 of this act. If the voters approve the constitutional amendments, Sections 3 through 9 of this act shall become effective on the earlier of January 1, 2005, and the date that a vacancy occurs in the office of Superintendent of Public Instruction.

SECTION 13. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 568

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S568-ARR-11 [v.1]

Date 4-16 ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator Gulley

moves to amend the bill on page 6, line 10,
by adding at the end of that line the following:
"The amendments set out in Sections 1 and 2 of this act shall also apply to the 2004 election."; and

on page12, line 15,
by adding at the end of that line the following:
"If the voters approve the constitutional amendments, Sections 3 though 9 of this act shall also apply to the 2004 election."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 568:
Superintendent of Pub. Instruction Appointed.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	April 16, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 568 would propose to the voters a constitutional amendment to make the State Superintendent of Public Instruction an appointee of the Governor, rather than an elected member of the Council of State. The referendum on the amendment would be held November 3, 2003, the same day that many cities have their municipal elections. If the voters approved the amendment, there would be no election for Superintendent in 2004, and the first appointed Superintendent would be named in 2005, unless the office became vacant earlier.

CURRENT LAW: The North Carolina Constitution provides for a State Board of Education with 13 members: the Lieutenant Governor, the State Treasurer, and 11 members to be appointed by the Governor and confirmed by the General Assembly. The Constitution gives the State Board the duty to "supervise and administer the free public school system and the educations funds provided for its support, . . ."

The Constitution also provides for an elected Superintendent of Public Instruction, whose job is to be "the secretary and chief administrative officer of the State Board of Education." The Superintendent is a member of the Council of State. The Superintendent is to be elected for a four-year term at the same time as the Governor.

BILL ANALYSIS: Senate Bill 568 would propose to the voters a Constitutional Amendment to make the Superintendent of Public Instruction an office appointed by the Governor. Legislative confirmation would not be required. *Sections 1 and 2 of the bill.*

The referendum would be held November 4, 2003. That is the same day that many cities have their municipal elections, but in unincorporated parts of the State there will not necessarily be another election that day. *Section 10.*

The language on the ballot would be FOR or AGAINST "*Constitutional amendments to make the Superintendent of Public Instruction an appointee of the Governor.*" *Section 10.*

If approved by the voters, the amendments would be effective January 1, 2005, or whenever the office of Superintendent becomes vacant, whichever is earlier. *Section 11.*

The remaining sections of the bill are statutory conforming changes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 912*
PROPOSED COMMITTEE SUBSTITUTE S912-CSRK-24 [v.3]

4/14/2003 2:52:48 PM

Short Title: Sexual Battery. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.1 reads as rewritten:

"**§ 14-27.1. Definitions.**

As used in this Article, unless the context requires otherwise:

* * *

(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, or (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks.

(6) 'Touching' as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim."

SECTION 2. Article 7 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.5A. Sexual battery.**

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class H felony."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 912:
Sexual Battery.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	April 10, 2003	**Summary by:**	H. Alan Pell
Version:	PCS S912-CSRK-24 [v.3]		Committee Co-Counsel

SUMMARY: ***This bill creates the new criminal offense of sexual battery. The act becomes effective on December 1, 2003, and would apply to offenses committed on or after that date.***

CURRENT LAW: A person convicted of a simple assault and battery is guilty of a Class 2 misdemeanor. If the victim is a female, and the perpetrator is a male at least 18 years of age, the person is guilty of a Class A1 misdemeanor. If serious injury is inflicted, it is a Class A1 misdemeanor.

BILL ANALYSIS:

Section 1: The act would create new definitions in the Article that covers sex offenses (Art. 7A, Chapter 14). Both "Sexual contact" and "Touching" would be defined.

Section 2: Chapter 14, Article 7A, would be amended to add a new criminal offense. A person who contacts another person's sexual organ, anus, breast, groin, or buttocks, or if the person's sexual organ, anus, breast, groin, or buttocks contact another person, he would be guilty of the offense--if the contact was made for the purpose of sexual gratification, sexual arousal, or sexual abuse. The contact must be by force and against the will of the other person (without consent), or with a person who is mentally incapacitated, disabled, or physically helpless. A person convicted of sexual battery is subject to sentencing as a Class H felon.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

BACKGROUND: Other offenses:

§ 14-27.5. Second-degree sexual offense.

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b)Any person who commits the offense defined in this section is guilty of a Class C felony.

[Requires the perpetrator to commit a "sexual act"--fellatio, cunnilingus, analingus, or anal intercourse; or penetration, however slight, by any object into the genital or anal opening of another person's body]

(over)

§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

(1) through (3) Repealed by Session Laws 1995, c. 507, s. 19.5(b);

(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;

(8) Repealed by Session Laws 1995, c. 507, s. 19.5(b);

(9) Commits an assault and battery against a sports official when the sports official is discharging . . . ..

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(1) Inflicts serious injury upon another person or uses a deadly weapon;

(2) Assaults a female, he being a male person at least 18 years of age;

(3) Assaults a child under the age of 12 years;

(4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties;

(5) Repealed by Session Laws 1999-105, s. 1; or

(6) Assaults a school employee or school volunteer when . . . .

§ 14-32.1. Assaults on handicapped persons; punishments.

(a) For purposes of this section, a "handicapped person" is a person who has:

(1) A physical or mental disability, such as decreased use of arms or legs, blindness, deafness, mental retardation or mental illness; or

(2) Infirmity

which would substantially impair that person's ability to defend himself.

(b) through (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 31.

(e) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any aggravated assault or assault and battery on a handicapped person is guilty of a Class F felony. A person commits an aggravated assault or assault and battery upon a handicapped person if, in the course of the assault or assault and battery, that person:

(1) Uses a deadly weapon or other means of force likely to inflict serious injury or serious damage to a handicapped person; or

(2) Inflicts serious injury or serious damage to a handicapped person; or

(3) Intends to kill a handicapped person.

(f) Any person who commits a simple assault or battery upon a handicapped person is guilty of a Class 1 misdemeanor.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 16, 2003

S. B. No. 912 Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS S912-CSRK-24

Rep.)
) CLODFELTER
Sen.)

moves to amend the bill on page 1, line 26

( ) WHICH CHANGES THE TITLE

by deleting the ~~the~~ words "Class H felony." and substituting the words "CLASS A1 misdemeanor."

SIGNED Daniel G. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 912*

Short Title:	Sexual Battery.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.15. Sexual battery.**

(a) Definitions. – The following definitions apply in this section:

(1) 'Intimate parts' means the genital area, groin, anus, inner thighs, buttocks, or breasts.

(2) 'Sexual contact' means any contact by a defendant with the intimate parts of a person not married to the defendant for the purpose of sexual gratification of the defendant or for the purpose of degrading or humiliating the person or any contact by a defendant of the intimate parts of the defendant with a person not married to the defendant for the purpose of sexual gratification of the defendant or for the purpose of degrading or humiliating the person.

(b) Offense. – A defendant commits the offense of sexual battery if the defendant intentionally subjects another person to sexual contact.

(c) Penalty. – A defendant convicted of a first offense under this section is guilty of a Class A1 misdemeanor. A defendant convicted of a second or subsequent offense under this section is guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-16-03 P.M. — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rachel O'Brien	PEFPNC
Tom Tucker	PARKS HEATING & COOLING
Lanny Huffman	Hickory Sheet Metal Co. P.O. Box 2049 Hickory
Richard Littikel	Cooper Mechanical Contractors
Larry F. Warren	Warren-Hay Mechanical Cont. Inc
Mike Mann	NCCA
Jon Carr	Jordan Price
Ben Hackaday	NCAPHCC
Fran Miller	Intern
John Rust	NCFPC
Shawn Nunis	NCSBA

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-16-03 PM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Public School Forum
John Phelps	NCLM
Sandi O'Brien	State Plbg + Heat, Bd.
[signature]	" " " "
Joanne Stevens	NCCASA
Steve Woodson	NC Farm Bureau
Cam Cavers	BPMH
Charles Marshall	Brooks, Pierce
Mark Prak	Brooks Pierce
Leslie Bevacqua	NCCBE
[signature]	Brooks Pierce

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-16-03 PM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Hunt	Conf. of DA's
Barry Fullbright	Hunton & Williams
Mary Thomas	REBIC
Rick Jackson	WBT Charlotte / Jeff Pilot
[illegible]	WITN-TV WASHINGTON, NC
Andrea Gregory	WRAL-FM RALEIGH, NC /
Michael Pulitzer	WXII-TV Winston-Salem, NC
MICHAEL R. CONRAD	WKCN-TV RALEIGH
DONALD CURTIS	WTF-CURTIS MEDIA GROUP
Sue Campbell	Charlotte
Boyd Cauble	City of Charlotte

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Stewart	Charlotte-Mecklenburg Police Dept. 1601 E. Trade St. Charlotte 28202
Sam Taylor	NCBIO
Susan Valaure	Nationwide
Tommy Harrell	Entergy
Richard Holden	SHP - Raleigh Hqs
John Nyberg	SHP - Raleigh Trng. Academy
[illegible]	SBI
[illegible]	Govt. Affairs
[illegible]	NCCASA
Gene Ainsworth	RJR

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 17, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-207	Restructure Prior Crim Record Pts.	Sen. Gulley
•	SB-208	Sentence Lengths	Sen. Gulley
•	SB 209	Adjust B1-E Felony Penalties	Sen. Gulley
•	SB-528	Amend Post- Release Supervision Laws	Sen. Hartsell
•	SB-761	Enhance Firearms Penalties	Sen. Gulley

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 17, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with sixteen members present. He stated that the bills on the agenda would be for discussion only, and not voted on at this time.

SB-207 (Restructure Prior Crim.Record Points) was introduced by Senator Clodfelter. Senator Wib Gulley, Chairman of Judiciary 1 Subcommittee spoke on the bill. Senator Clodfelter introduced guest speaker, Mr. Ron Payne from the NC Superior Court who spoke extensively on the bill. Senator's Jeanne Lucas, Tony Rand, Charlie Albertson, R.C. Soles, Cecil Hargett and Wib Gulley had questions about the bill. Judge Payne answered the questions. No action taken on bill.

SB-208 (Sentence Lengths) was introduced by Senator Clodfelter. Judge Payne explained that the bill would amend the Structured Sentencing Act by calculating the increases between record levels using a set percentage. See attached Bill Summary for further information. No action taken on bill.

SB-209 (Adjust B1-E Felony Penalties) was introduced by Senator Clodfelter. Judge Payne explained that the bill would amend the Structured Sentencing Act by reducing three months from the minimum sentence ranges for felony classesB1 through E. See attached Bill Summary for further information. Senator's Tony Rand, Wib Gulley, Phillip Berger and Clark Jenkins had questions. Judge Payne and Ms. Tracy Little, Deputy Commissioner of NC Department of Corrections answered the questions and spoke on the bill. Ms. Little said she would get more information and bring it back to the members. Senator Clodfelter recognized Judge Irwin Spainhour, Chairman of the NC Sentencing & Policy Advisory Commission who explained what evidence the court would allow a jury to hear. Mr. Tom Keith, District Attorney from Forsythe County, Mr. Jeff Hunt, District Attorney from Brevard County were both recognized by Senator Clodfelter. No action taken on bill.

Being no further business the meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 207

Short Title:	Restructure Prior Crim Record Pts.	(Public)
Sponsors:	Senators Gulley; and Hartsell.	
Referred to:	Judiciary I.	

February 26, 2003

A BILL TO BE ENTITLED

AN ACT TO RESTRUCTURE THE PRIOR RECORD LEVEL POINT RANGES IN ORDER TO EXPAND THE POINTS IN PRIOR RECORD LEVEL I AND TO EVEN OUT THE REMAINING RANGES, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.14(c) reads as rewritten:

"(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – ~~0 points.~~Not more than 2 points.

(2) Level II – At least ~~1~~,3, but not more than ~~4 points.~~ 6 points.

(3) Level III – At least ~~5~~,7, but not more than ~~8~~10 points.

(4) Level IV – At least ~~9~~,11, but not more than 14 points.

(5) Level V – At least 15, but not more than 18 points.

(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed."

SECTION 2. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the

defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	~~0 Pts~~	~~1-4 Pts~~	~~5-8 Pts~~	~~9-14 Pts~~	15-18 Pts	19+ Pts	
	0-2 Pts	3-6 Pts	7-10 Pts	11-14 Pts			
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated

E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 208

Short Title:	Sentence Lengths.	(Public)
Sponsors:	Senators Gulley; and Hartsell.	
Referred to:	Judiciary I.	

February 26, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE INCREASE IN SENTENCE LENGTHS BETWEEN PRIOR RECORD LEVELS MORE PROPORTIONATE USING A SET PERCENTAGE INCREMENT, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the

mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	~~A~~ ~~240-300~~	~~A~~ ~~288-360~~	~~A~~ ~~336-420~~	~~A~~ ~~384-480~~	~~A~~ ~~Life Imprisonment Without Parole~~	~~A~~	~~DISPOSITION~~ ~~Aggravated~~
~~B1~~	~~192-240~~	~~230-288~~	~~269-336~~	~~307-384~~	~~346-433~~	~~384-480~~	~~PRESUMPTIVE~~
	~~144-192~~	~~173-230~~	~~202-269~~	~~230-307~~	~~260-346~~	~~288-384~~	~~Mitigated~~
	240-300	276-345	317-397	365-456	Life Imprisonment Without Parole		Aggravated
B1	192-240	221-276	254-317	292-365	336-420	386-483	PRESUMPTIVE
	144-192	166-221	190-254	219-292	252-336	290-386	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~157-196~~	~~189-237~~	~~220-276~~	~~251-313~~	~~282-353~~	~~313-392~~	~~Aggravated~~
~~B2~~	~~125-157~~	~~151-189~~	~~176-220~~	~~201-251~~	~~225-282~~	~~251-313~~	~~PRESUMPTIVE~~
	~~94-125~~	~~114-151~~	~~132-176~~	~~151-201~~	~~169-225~~	~~188-251~~	~~Mitigated~~
	157-196	180-225	207-258	238-297	273-342	314-393	Aggravated
B2	125-157	144-180	165-207	190-238	219-273	251-314	PRESUMPTIVE
	94-125	108-144	124-165	143-190	164-219	189-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~73-92~~	~~100-125~~	~~116-145~~	~~133-167~~	~~151-188~~	~~168-210~~	~~Aggravated~~
~~C~~	~~58-73~~	~~80-100~~	~~93-116~~	~~107-133~~	~~121-151~~	~~135-168~~	~~PRESUMPTIVE~~
	~~44-58~~	~~60-80~~	~~70-93~~	~~80-107~~	~~90-121~~	~~101-135~~	~~Mitigated~~
	73-92	83-104	96-120	110-138	127-159	146-182	Aggravated
C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
	44-58	50-67	58-77	66-88	76-101	87-117	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~64-80~~	~~77-95~~	~~103-129~~	~~117-146~~	~~133-167~~	~~146-183~~	~~Aggravated~~
~~D~~	~~51-64~~	~~61-77~~	~~82-103~~	~~94-117~~	~~107-133~~	~~117-146~~	~~PRESUMPTIVE~~
	~~38-51~~	~~46-61~~	~~61-82~~	~~71-94~~	~~80-107~~	~~88-117~~	~~Mitigated~~
	64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
	38-51	44-59	51-67	58-78	67-89	77-103	Mitigated

		I/A	I/A	A	A	A	A	DISPOSITION
		~~25-31~~	~~29-36~~	~~34-42~~	~~46-58~~	~~53-66~~	~~59-74~~	~~Aggravated~~
	~~E~~	~~20-25~~	~~23-29~~	~~27-34~~	~~37-46~~	~~42-53~~	~~47-59~~	~~PRESUMPTIVE~~
		~~15-20~~	~~17-23~~	~~20-27~~	~~28-37~~	~~32-42~~	~~35-47~~	~~Mitigated~~
		25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
	E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
		15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
		I/A	I/A	I/A	A	A	A	DISPOSITION
		~~16-20~~	~~19-24~~	~~21-26~~	~~25-31~~	~~34-42~~	~~39-49~~	~~Aggravated~~
	~~F~~	~~13-16~~	~~15-19~~	~~17-21~~	~~20-25~~	~~27-34~~	~~31-39~~	~~PRESUMPTIVE~~
		~~10-13~~	~~11-15~~	~~13-17~~	~~15-20~~	~~20-27~~	~~23-31~~	~~Mitigated~~
		16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
	F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
		10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
		I/A	I/A	I/A	I/A	A	A	DISPOSITION
		~~13-16~~	~~15-19~~	~~16-20~~	~~20-25~~	~~21-26~~	~~29-36~~	~~Aggravated~~
	~~G~~	~~10-13~~	~~12-15~~	~~13-16~~	~~16-20~~	~~17-21~~	~~23-29~~	~~PRESUMPTIVE~~
		~~8-10~~	~~9-12~~	~~10-13~~	~~12-16~~	~~13-17~~	~~17-23~~	~~Mitigated~~
		13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
	G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
		8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
		C	C/I	I	I/A	I/A	I/A	DISPOSITION
		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 208:
Sentence Lengths.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Gulley; Sen. Hartsell
Date:	April 17, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***This bill would amend the Structured Sentencing Act by calculating the increases between record levels using a set percentage). The Level I sentence lengths would remain unchanged; the sentence lengths between each subsequent prior record level would be increased by 15% in all felony classes, except for Classes H and I. The act is effective Dec. 1, 2003, and applies to offenses committed on or after that date.***

BILL ANALYSIS: Section 1 of the bill would restructure the minimum range sentences for Prior Record Levels II through VI, for felony classes B1 through G. The minimum ranges for Classes H and I would remain unchanged. Section 2 provides that the act is effective December 1, 2003, and applies to offenses committed on or after that date.

BACKGROUND: This bill presents one of the alternatives presented in the Report of the NC Sentencing and Policy Commission to the 2002 Session of the 2001 NC General Assembly (May 2002). According to the report, the Commission was concerned with the fact that the increase in sentence lengths from one prior record level to the next was not consistent within the Felony Punishment Chart. The Commission adopted the alternative of using a percentage increase across the prior record levels because it "best restores proportionality to the felony grid." Report at page 10.

The report notes that application of the proposal to felony convictions in Fiscal Year 2000-2001 would have yield the following result: less than 14% of the offenders would have been sentenced in grid cells with reduced sentences, and the other 86% would have been sentenced in grid cells where sentence lengths would be either increased or unchanged.

S208-smrk-02

Combined Impact of:

SB 207 – Restructure Prior Criminal Record Points.

SB 208 – Sentence Lengths

SB 209 – Adjust B1-E Felony Penalties

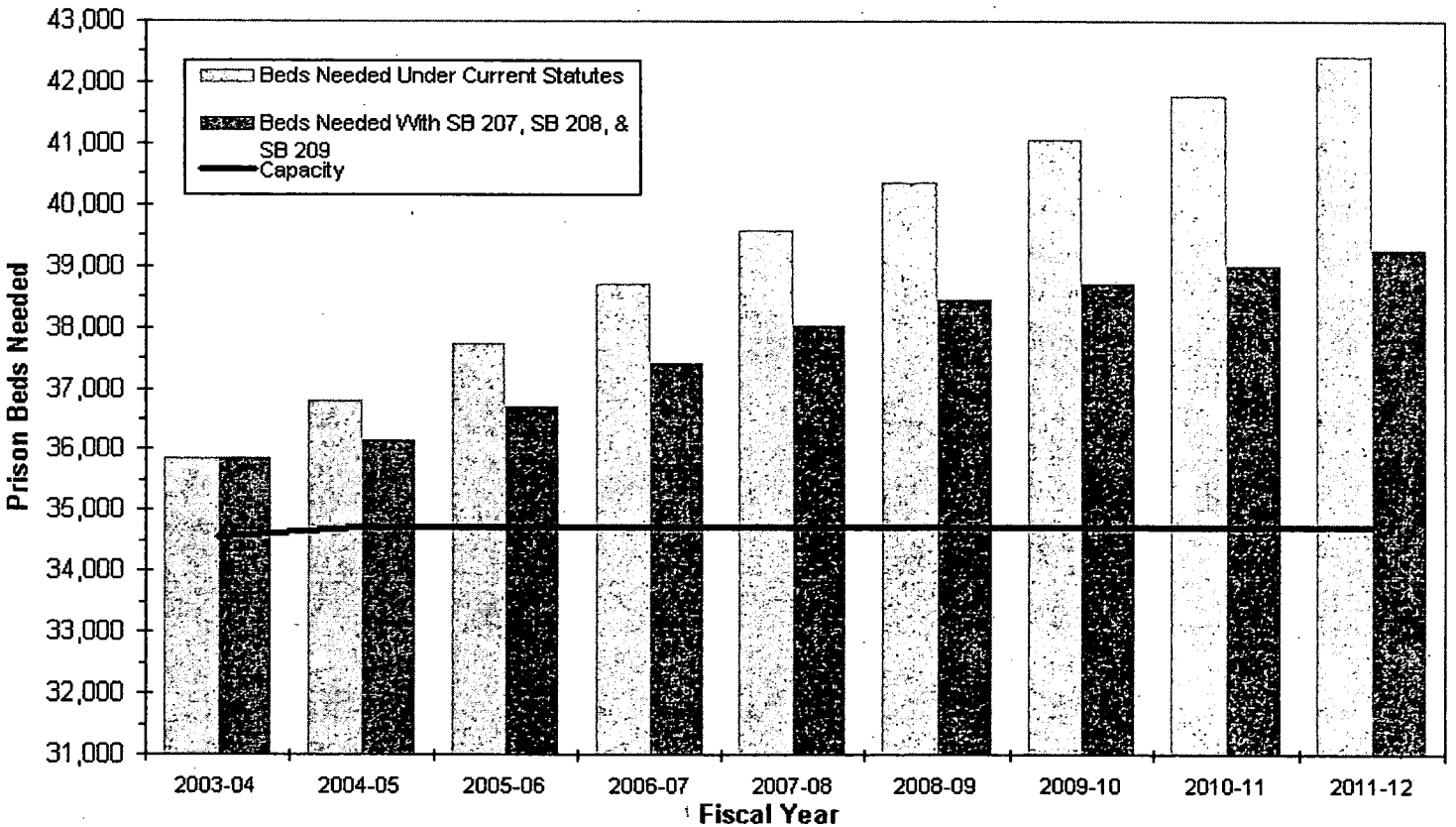
Fiscal Research Division
April 14, 2003

Table 1: Impact of SB 207, 208, and 209 on State Prison Population, February 2003

Fiscal Year	Restructure Prior Record Level	Proportional Sentence Length	Adjust B1-E Felony Penalties by Shifting 3 mos. Prison to Post Release	Combined Impact
2002-2003	0	0	0	0
2003-2004	0	0	0	0
2004-2005	-672	7	8	-651
2005-2006	-956	49	-90	-1037
2006-2007	-1095	18	-181	-1274
2007-2008	-1205	-43	-251	-1535
2008-2009	-1348	-187	-316	-1911
2009-2010	-1511	-434	-391	-2369
2010-2011	-1645	-696	-468	-2786
2011-2012	-1750	-948	-522	-3156
2012-2013	-1838	-1154	-575	-3427
2013-2014	-1916	-1306	-613	-3640

*Combined impact means impact of implementing SB 207, SB 208, & SB 209; indiv. totals will not add up to combined totals
Source: Sentencing and Policy Advisory Commission March 2003
* For a full discussion of these sentencing alternatives, see The North Carolina Sentencing and Policy Advisory Commission's Report on Study of Structured Sentencing Pursuant to Session Law 2001-424 Section 25.8, May 2002.

Figure 1: Beds Needed Under Current Structured Sentencing Act vs. Beds Needed with Ratification of SB 207, 208, & 209.



NOTE: Ratification of SB 207, 208, and 209 saves the need for 3,156 prison beds by FY 2011-2012
Even with Ratification of SB 207, 208, and 209, there will remain a 4,528 bed deficit by FY 2011-2012.

Table 2: Combined Prison Savings in Prison Beds, Operating and Construction Expenditures for SB 207, 208, 209

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Prison Beds Saved (Cumulative)	0	-651	-1,037	-1,274	-1,535	-1,911	-2,369	-2,786	-3,156
Correction Positions Saved (cumulative)	0	-260	-415	-510	-614	-764	-948	-1,114	-1,262
Operating Expenditures Saved if SB 207, 208, and 209 are Ratified (Mil).	$0.00	($16.70)	($27.39)	($34.66)	($43.02)	($55.16)	($70.43)	($85.32)	($99.55)
Construction Expenditures Saved if SB 207, 208, and 209 are Ratified (Mil).	($80.02)	($19.20)	($22.05)	($33.59)	($42.96)	($41.07)	($42.18)	Unable to project*	Unable to project*

* Unable to project construction expenditures because prison population projections are only available through 2011-2012

The cumulative effect of the combined sentencing bills is to save the need for 3,156 prison beds by 2011-2012. With current costs and projections, by 2011-2012, the State will have saved $432.2 million, cumulative, in operating costs. The State will have saved $281.24 million, cumulative, in forgone construction costs by 2009-2010 (projections for construction costs cannot extend beyond 2009-2010).

TABLE 3: NORTH CAROLINA PRISON POPULATION COMPARED TO DEPARTMENT OF CORRECTION PRISON BED CAPACITY*
(JANUARY 2003)

Fiscal Yr. Ending	Inmate Pop. Projection*	DOC Expanded Prison Capacity**	**Prison Beds Over/Under**	DOC Standard Prison Capacity	Prison Beds Over/Under
6/30/2003	34,570	31,969	**-2,601**	28,501	**-6,069**
6/30/2004	35,851	34,561	**-1,290**	31,093	**-4,758**
6/30/2005	36,787	34,729	**-2,058**	31,261	**-5,526**
6/30/2006	37,739	34,729	**-3,010**	31,261	**-6,478**
6/30/2007	38,687	34,729	**-3,958**	31,261	**-7,426**
6/30/2008	39,557	34,729	**-4,828**	31,261	**-8,296**
6/30/2009	40,345	34,729	**-5,616**	31,261	**-9,084**
6/30/2010	41,068	34,729	**-6,339**	31,261	**-9,807**
6/30/2011	41,768	34,729	**-7,039**	31,261	**-10,507**
6/30/2012	42,413	34,729	**-7,684**	31,261	**-11,152**

* Population Projections by Sentencing and Policy Advisory Commission, Jan. 2003
DOC Expanded and Standard Operating Capacity as of Dec. 4, 2002 with the 2,592 new beds minus beds lost by closing Blue Ridge and Henderson. **Standard Operating Capacity (SOC) is at 100% (one inmate per cell or up to 50 Sq. Ft. per inmate in dorms). **Expanded Operating Capacity** (EOC) is up to 130% (two inmates in one cell or less than 50 square feet per inmate in dorms. FRD 01/13/03

TABLE 4

NC Prison Population Changes with New Beds and with SB 207, 208, & 209

Fiscal Yr. Ending	Inmate Pop. Projection*	DOC Expan. Capacity**	**Prison Beds Over/Under w/no change**	Prison Beds Over/Under **w/2prisons*** **	Prison Beds Over/Under **w/3 prisons**** **	Prison Beds Over/under **w/SB 207,08,09 & 2 prisons**	Prison Beds Over/Under **w/SB 207,208,209 & 3 prisons**
6/30/2003	34,570	31,969	**-2,601**	-2,601	-2,601	-2,601	-2,601
6/30/2004	35,851	34,561	**-1,290**	-1,290	-1,290	-1,290	-1,290
6/30/2005	36,787	34,729	**-2,058**	-2,058	-2,058	-1,407	-1,407
6/30/2006	37,739	34,729	**-3,010**	-1,282	-1,282	-245	-245
6/30/2007	38,687	34,729	**-3,958**	-2,230	-1,366	-956	-92
6/30/2008	39,557	34,729	**-4,828**	-3,100	-2,236	-1,565	-701
6/30/2009	40,345	34,729	**-5,616**	-3,888	-3,024	-1,977	-1,113
6/30/2010	41,068	34,729	**-6,339**	-4,611	-3,747	-2,242	-1,378
6/30/2011	41,768	34,729	**-7,039**	-5,311	-4,447	-2,525	-1,661
630/2012	42,413	34,729	**-7,684**	-5,956	-5,092	-2,800	-1,936

* Population Projections by Sentencing and Policy Advisory Commission, Jan. 2003

DOC Expanded Capacity as of Dec. 4, 2002 with 2,592 new beds. **Expanded Operating Capacity (EOC) (EOC) is one or two inmates per cell, or less than 50 square feet per inmate in dorms (35 sq ft is 130% of standard capacity)

*** "Prisons" assumes two new prisons with EOC of 1,728 new beds (FY 05-06) or 3 with 2,592 new beds (FY 06-07)

****SB 207, 208 & 209 are (1) Restructure Prior Record Points; (2) Proportionate Sentence Lengths & (3)Adjust B1-E Felonies)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 209

Short Title:	Adjust B1-E Felony Penalties.	(Public)
Sponsors:	Senators Gulley; and Hartsell.	
Referred to:	Judiciary I.	

February 26, 2003

A BILL TO BE ENTITLED

AN ACT TO REALLOCATE THREE MONTHS FROM THE MINIMUM SENTENCE OF CLASSES B1 THROUGH E TO THE MAXIMUM SENTENCE, AND TO INCREASE THE PERIOD OF POST-RELEASE SUPERVISION FROM NINE MONTHS TO TWELVE MONTHS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the

mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	~~240-300~~	~~288-360~~	~~336-420~~	~~384-480~~	~~Life Imprisonment Without Parole~~		~~Aggravated~~
~~B1~~	~~192-240~~	~~230-288~~	~~269-336~~	~~307-384~~	~~346-433~~	~~384-480~~	~~PRESUMPTIVE~~
	~~144-192~~	~~173-230~~	~~202-269~~	~~230-307~~	~~260-346~~	~~288-384~~	~~Mitigated~~
	237-297	285-357	333-417	381-477	Life Imprisonment Without Parole		Aggravated
B1	189-237	227-285	266-333	304-381	343-430	381-477	PRESUMPTIVE
	141-189	170-227	199-266	227-304	257-343	285-381	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~157-196~~	~~189-237~~	~~220-276~~	~~251-313~~	~~282-353~~	~~313-392~~	~~Aggravated~~
~~B2~~	~~125-157~~	~~151-189~~	~~176-220~~	~~201-251~~	~~225-282~~	~~251-313~~	~~PRESUMPTIVE~~
	~~94-125~~	~~114-151~~	~~132-176~~	~~151-201~~	~~169-225~~	~~188-251~~	~~Mitigated~~
	154-193	186-234	217-273	248-310	279-350	310-389	Aggravated
B2	122-154	148-186	173-217	198-248	222-279	248-310	PRESUMPTIVE
	91-122	111-148	129-173	148-198	166-222	185-248	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~73-92~~	~~100-125~~	~~116-145~~	~~133-167~~	~~151-188~~	~~168-210~~	~~Aggravated~~
~~C~~	~~58-73~~	~~80-100~~	~~93-116~~	~~107-133~~	~~121-151~~	~~135-168~~	~~PRESUMPTIVE~~
	~~44-58~~	~~60-80~~	~~70-93~~	~~80-107~~	~~90-121~~	~~101-135~~	~~Mitigated~~
	70-89	97-122	113-142	130-164	148-185	165-207	Aggravated
C	55-70	77-97	90-113	104-130	118-148	132-165	PRESUMPTIVE
	41-55	57-77	67-90	77-104	87-118	98-132	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~64-80~~	~~77-95~~	~~103-129~~	~~117-146~~	~~133-167~~	~~146-183~~	~~Aggravated~~
~~D~~	~~51-64~~	~~61-77~~	~~82-103~~	~~94-117~~	~~107-133~~	~~117-146~~	~~PRESUMPTIVE~~
	~~38-51~~	~~46-61~~	~~61-82~~	~~71-94~~	~~80-107~~	~~88-117~~	~~Mitigated~~
	61-77	74-92	100-126	114-143	130-164	143-180	Aggravated
D	48-61	58-74	79-100	91-114	104-130	114-143	PRESUMPTIVE
	35-48	43-58	58-79	68-91	77-104	85-114	Mitigated

		I/A	I/A	A	A	A	A	DISPOSITION
		~~25-31~~	~~29-36~~	~~34-42~~	~~46-58~~	~~53-66~~	~~59-74~~	~~Aggravated~~
	~~E~~	~~20-25~~	~~23-29~~	~~27-34~~	~~37-46~~	~~42-53~~	~~47-59~~	~~PRESUMPTIVE~~
		~~15-20~~	~~17-23~~	~~20-27~~	~~28-37~~	~~32-42~~	~~35-47~~	~~Mitigated~~
		22-28	26-33	31-39	43-55	50-63	56-71	Aggravated
	E	17-22	20-26	24-31	34-43	39-50	44-56	PRESUMPTIVE
		12-17	14-20	17-24	25-34	29-39	32-44	Mitigate
		I/A	I/A	I/A	A	A	A	DISPOSITION
		16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
	F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
		10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
		I/A	I/A	I/A	I/A	A	A	DISPOSITION
		13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
	G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
		8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
		C	C/I	I	I/A	I/A	I/A	DISPOSITION
		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table

below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

~~15-27~~	~~16-29~~	~~17-30~~	~~18-31~~	~~19-32~~	~~20-33~~	~~21-35~~	~~22-36~~
~~23-37~~	~~24-38~~	~~25-39~~	~~26-41~~	~~27-42~~	~~28-43~~	~~29-44~~	~~30-45~~
~~31-47~~	~~32-48~~	~~33-49~~	~~34-50~~	~~35-51~~	~~36-53~~	~~37-54~~	~~38-55~~
~~39-56~~	~~40-57~~	~~41-59~~	~~42-60~~	~~43-61~~	~~44-62~~	~~45-63~~	~~46-65~~
~~47-66~~	~~48-67~~	~~49-68~~	~~50-69~~	~~51-71~~	~~52-72~~	~~53-73~~	~~54-74~~
~~55-75~~	~~56-77~~	~~57-78~~	~~58-79~~	~~59-80~~	~~60-81~~	~~61-83~~	~~62-84~~
~~63-85~~	~~64-86~~	~~65-87~~	~~66-89~~	~~67-90~~	~~68-91~~	~~69-92~~	~~70-93~~
~~71-95~~	~~72-96~~	~~73-97~~	~~74-98~~	~~75-99~~	~~76-101~~	~~77-102~~	~~78-103~~
~~79-104~~	~~80-105~~	~~81-107~~	~~82-108~~	~~83-109~~	~~84-110~~	~~85-111~~	~~86-113~~
~~87-114~~	~~88-115~~	~~89-116~~	~~90-117~~	~~91-119~~	~~92-120~~	~~93-121~~	~~94-122~~
~~95-123~~	~~96-125~~	~~97-126~~	~~98-127~~	~~99-128~~	~~100-129~~	~~101-131~~	~~102-132~~
~~103-133~~	~~104-134~~	~~105-135~~	~~106-137~~	~~107-138~~	~~108-139~~	~~109-140~~	~~110-141~~
~~111-143~~	~~112-144~~	~~113-145~~	~~114-146~~	~~115-147~~	~~116-149~~	~~117-150~~	~~118-151~~
~~119-152~~	~~120-153~~	~~121-155~~	~~122-156~~	~~123-157~~	~~124-158~~	~~125-159~~	~~126-161~~
~~127-162~~	~~128-163~~	~~129-164~~	~~130-165~~	~~131-167~~	~~132-168~~	~~133-169~~	~~134-170~~
~~135-171~~	~~136-173~~	~~137-174~~	~~138-175~~	~~139-176~~	~~140-177~~	~~141-179~~	~~142-180~~
~~143-181~~	~~144-182~~	~~145-183~~	~~146-185~~	~~147-186~~	~~148-187~~	~~149-188~~	~~150-189~~
~~151-191~~	~~152-192~~	~~153-193~~	~~154-194~~	~~155-195~~	~~156-197~~	~~157-198~~	~~158-199~~
~~159-200~~	~~160-201~~	~~161-203~~	~~162-204~~	~~163-205~~	~~164-206~~	~~165-207~~	~~166-209~~
~~167-210~~	~~168-211~~	~~169-212~~	~~170-213~~	~~171-215~~	~~172-216~~	~~173-217~~	~~174-218~~
~~175-219~~	~~176-221~~	~~177-222~~	~~178-223~~	~~179-224~~	~~180-225~~	~~181-227~~	~~182-228~~
~~183-229~~	~~184-230~~	~~185-231~~	~~186-233~~	~~187-234~~	~~188-235~~	~~189-236~~	~~190-237~~
~~191-239~~	~~192-240~~	~~193-241~~	~~194-242~~	~~195-243~~	~~196-245~~	~~197-246~~	~~198-247~~
~~199-248~~	~~200-249~~	~~201-251~~	~~202-252~~	~~203-253~~	~~204-254~~	~~205-255~~	~~206-257~~
~~207-258~~	~~208-259~~	~~209-260~~	~~210-261~~	~~211-263~~	~~212-264~~	~~213-265~~	~~214-266~~
~~215-267~~	~~216-269~~	~~217-270~~	~~218-271~~	~~219-272~~	~~220-273~~	~~221-275~~	~~222-276~~
~~223-277~~	~~224-278~~	~~225-279~~	~~226-281~~	~~227-282~~	~~228-283~~	~~229-284~~	~~230-285~~
~~231-287~~	~~232-288~~	~~233-289~~	~~234-290~~	~~235-291~~	~~236-293~~	~~237-294~~	~~238-295~~
~~239-296~~	~~240-297~~	~~241-299~~	~~242-300~~	~~243-301~~	~~244-302~~	~~245-303~~	~~246-305~~
~~247-306~~	~~248-307~~	~~249-308~~	~~250-309~~	~~251-311~~	~~252-312~~	~~253-313~~	~~254-314~~
~~255-315~~	~~256-317~~	~~257-318~~	~~258-319~~	~~259-320~~	~~260-321~~	~~261-323~~	~~262-324~~
~~263-325~~	~~264-326~~	~~265-327~~	~~266-329~~	~~267-330~~	~~268-331~~	~~269-332~~	~~270-333~~
~~271-335~~	~~272-336~~	~~273-337~~	~~274-338~~	~~275-339~~	~~276-341~~	~~277-342~~	~~278-343~~
~~279-344~~	~~280-345~~	~~281-347~~	~~282-348~~	~~283-349~~	~~284-350~~	~~285-351~~	~~286-353~~
~~287-354~~	~~288-355~~	~~289-356~~	~~290-357~~	~~291-359~~	~~292-360~~	~~293-361~~	~~294-362~~
~~295-363~~	~~296-365~~	~~297-366~~	~~298-367~~	~~299-368~~	~~300-369~~	~~301-371~~	~~302-372~~
~~303-373~~	~~304-374~~	~~305-375~~	~~306-377~~	~~307-378~~	~~308-379~~	~~309-380~~	~~310-381~~
~~311-383~~	~~312-384~~	~~313-385~~	~~314-386~~	~~315-387~~	~~316-389~~	~~317-390~~	~~318-391~~
~~319-392~~	~~320-393~~	~~321-395~~	~~322-396~~	~~323-397~~	~~324-398~~	~~325-399~~	~~326-401~~
~~327-402~~	~~328-403~~	~~329-404~~	~~330-405~~	~~331-407~~	~~332-408~~	~~333-409~~	~~334-410~~
~~335-411~~	~~336-413~~	~~337-414~~	~~338-415~~	~~339-416~~			

12-27	13-28	14-29	15-30	16-32	17-33	18-34	19-35
20-36	21-38	22-39	23-40	24-41	25-42	26-44	27-45
28-46	29-47	30-48	31-50	32-51	33-52	34-53	35-54
36-56	37-57	38-58	39-59	40-60	41-62	42-63	43-64
44-65	45-66	46-68	47-69	48-70	49-71	50-72	51-74
52-75	53-76	54-77	55-78	56-80	57-81	58-82	59-83
60-84	61-86	62-87	63-88	64-89	65-90	66-92	67-93
68-94	69-95	70-96	71-98	72-99	73-100	74-101	75-102
76-104	77-105	78-106	79-107	80-108	81-110	82-111	83-112
84-113	85-114	86-116	87-117	88-118	89-119	90-120	91-122
92-123	93-124	94-125	95-126	96-128	97-129	98-130	99-131
100-132	101-134	102-135	103-136	104-137	105-138	106-140	107-141
108-142	109-143	110-144	111-146	112-147	113-148	114-149	115-150
116-152	117-153	118-154	119-155	120-156	121-158	122-159	123-160
124-161	125-162	126-164	127-165	128-166	129-167	130-168	131-170
132-171	133-172	134-173	135-173	136-176	137-177	138-178	139-179
140-180	141-182	142-183	143-184	144-185	145-186	146-188	147-189
148-190	149-191	150-192	151-194	152-195	153-196	154-197	155-198
156-200	157-201	158-202	159-203	160-204	161-206	162-207	163-208
164-209	165-210	166-212	167-213	168-214	169-215	170-216	171-218
172-219	173-220	174-221	175-222	176-224	177-225	178-226	179-227
180-228	181-230	182-231	183-232	184-233	185-234	186-236	187-237
188-238	189-239	190-240	191-242	192-243	193-244	194-245	195-246
196-248	197-249	198-250	199-251	200-252	201-254	202-255	203-256
204-257	205-258	206-260	207-261	208-262	209-263	210-264	211-266
212-267	213-268	214-269	215-270	216-272	217-273	218-274	219-275
220-276	221-278	222-279	223-280	224-281	225-282	226-284	227-285
228-286	229-287	230-288	231-290	232-291	233-292	234-293	235-294
236-296	237-297	238-298	239-299	240-300	241-302	242-303	243-304
244-305	245-306	246-308	247-309	248-310	249-311	250-312	251-314
252-315	253-316	254-317	255-318	256-320	257-321	258-322	259-323
260-324	261-326	262-327	263-328	264-329	265-330	266-332	267-333
268-334	269-335	270-336	271-338	272-339	273-340	274-341	275-342
276-344	277-345	278-346	279-347	280-348	281-350	282-351	283-352
284-353	285-354	286-356	287-357	288-358	289-359	290-360	291-362
292-363	293-364	294-365	295-366	296-368	297-369	298-370	299-371
300-372	301-374	302-375	303-376	304-377	305-378	306-380	307-381
308-382	309-383	310-384	311-386	312-387	313-388	314-389	315-390
316-392	317-393	318-394	319-395	320-396	321-398	322-399	323-400
324-401	325-402	326-404	327-405	328-406	329-407	330-408	331-410
332-411	333-412	334-413	335-414	336-416	337-417	338-418	339-419

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340

months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus ~~nine~~ twelve additional months."

SECTION 2. G.S. 15A-1368(a)(5) reads as rewritten:

"(5) Maximum imposed term. – The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment or judgments, less ~~nine~~ 12 months for each of the second and subsequent sentences imposed for Class B through Class E felonies."

SECTION 3. G.S. 15A-1368.2 reads as rewritten:

"**§ 15A-1368.2. Post-release supervision eligibility and procedure.**

(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less ~~nine~~ 12 months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less ~~nine~~ 12 months.

(b) A prisoner shall not refuse post-release supervision.

(c) A supervisee's period of post-release supervision shall be for a period of ~~nine~~ 12 months, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5.

(d) A supervisee's period of post-release supervision may be reduced while the supervisee is under supervision by earned time awarded by the Department of Correction, pursuant to rules adopted in accordance with law. A supervisee is eligible to receive earned time credit toward the period of supervision for compliance with reintegrative conditions described in G.S. 15A-1368.5.

(e) Repealed by Session Laws 1997-237, s. 7.

(f) When a supervisee completes the period of post-release supervision, the sentence or sentences from which the supervisee was placed on post-release supervision are terminated."

SECTION 4. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 209:
Adjust B1-E Felony Penalties.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Gulley; Sen. Hartsell
Date:	April 17, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Subcommittee Counsel

SUMMARY: ***This bill would amend the Structured Sentencing Act by reducing three months from the minimum sentence ranges for felony classes B1 through E; adding three months to the maximum terms; increasing the months deducted from a maximum sentence for release purposes from nine to twelve months; and by increasing the post-release supervision period from nine to twelve months. The act is effective Dec. 1, 2003, and applies to offenses committed on or after that date.***

CURRENT LAW: Post release supervision is a nine-month mandatory period for Classes B1 through E. A prisoner is released nine months before the prescribed maximum for his offense. When a supervisee completes post release supervision, the sentence for the offense upon which he was convicted is terminated. If the supervision is revoked, the supervisee returns to prison for nine months.

BILL ANALYSIS:

Section 1: The minimum range sentences for Classes B1 through E felonies would be reduced by three months.

Section 2: Prisoners serving consecutive sentences, with second and subsequent sentences for Class B1 through Class E felonies, would have twelve months [currently nine months] deducted from the maximum imposed term for each of the second or subsequent Class B1 through E felonies.

Section 3: This section of the bill provides that prisoners would be released from prison on a date twelve months [currently nine months] prior to the maximum imposed term. Prisoners also receive credit (deductions from the maximum term) for any earned time allowed by the DOC or local confinement facility. If the supervision is revoked, the supervisee would return to prison to complete the twelve-month period.

Section 4: The act is effective December 1, 2003, and applies to offenses committed on or after that date.

BACKGROUND: This bill presents one of the alternatives presented in the Report of the NC Sentencing and Policy Commission to the 2002 Session of the 2001 NC General Assembly (May 2002). The report notes that the reallocation of three months from the minimum sentence to the maximum sentence provides for an additional three months to be built into the post-release supervision period. The Commission determined that the lengthening of the supervision period would have merit, as the "primary purpose of post-release supervision is to monitor and assist in the reintegration of this specific group of offenders." Report at p. 14. Post-release supervisees are monitored by Division of Community Correction probation officers. Consequently, the Commission determined that this option would require additional community resources.

S209-smrk-02

Combined Impact of:

SB 207 – Restructure Prior Criminal Record Points.

SB 208 – Sentence Lengths

SB 209 – Adjust B1-E Felony Penalties

Fiscal Research Division
April 14, 2003

Table 1: Impact of SB 207, 208, and 209 on State Prison Population, February 2003

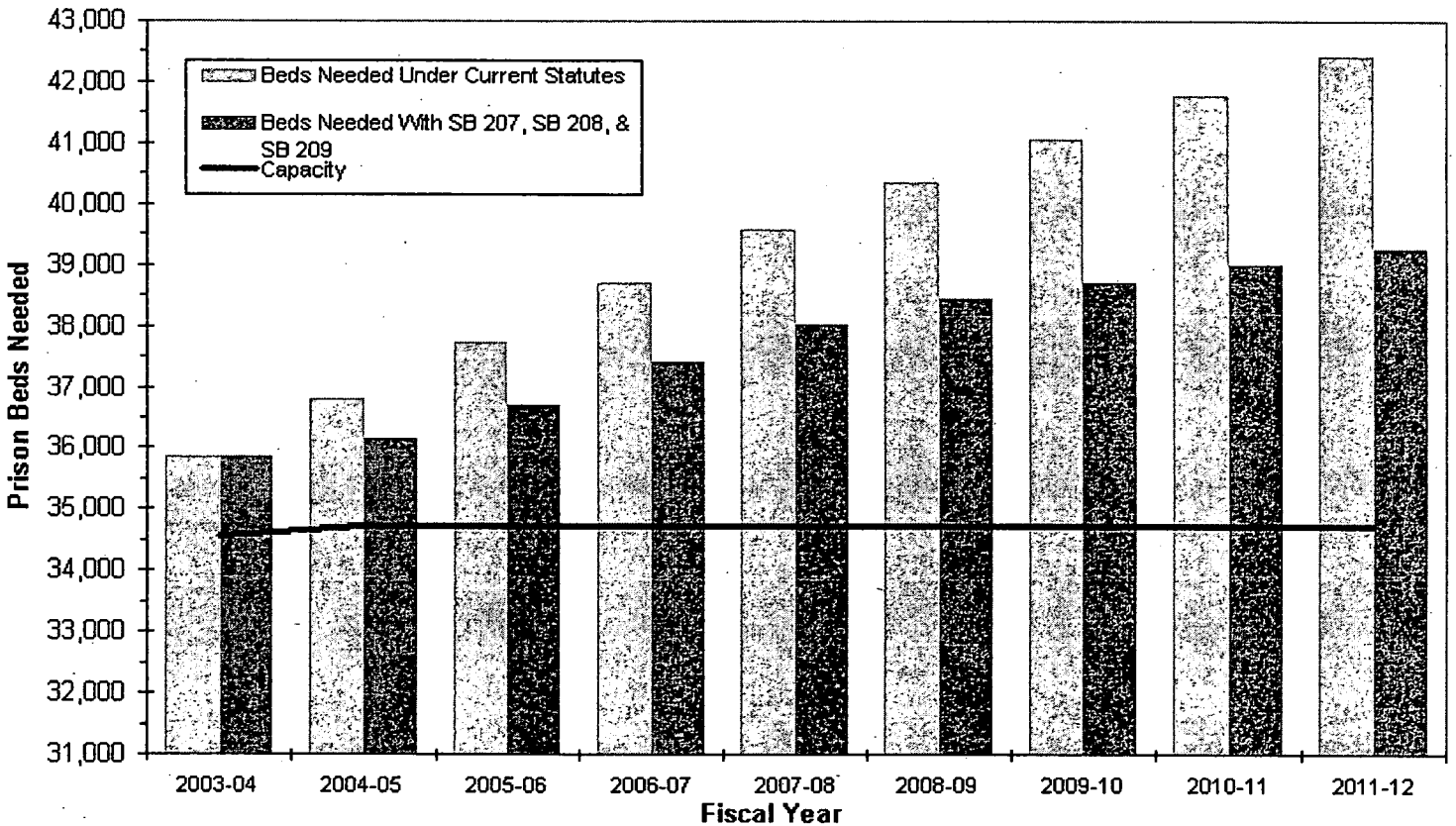
Fiscal Year	Restructure Prior Record Level	Proportional Sentence Length	Adjust B1-E Felony Penalties by Shifting 3 mos. Prison to Post Release	Combined Impact
2002-2003	0	0	0	0
2003-2004	0	0	0	0
2004-2005	-672	7	8	-651
2005-2006	-956	49	-90	-1037
2006-2007	-1095	18	-181	-1274
2007-2008	-1205	-43	-251	-1535
2008-2009	-1348	-187	-316	-1911
2009-2010	-1511	-434	-391	-2369
2010-2011	-1645	-696	-468	-2786
2011-2012	-1750	-948	-522	-3156
2012-2013	-1838	-1154	-575	-3427
2013-2014	-1916	-1306	-613	-3640

*Combined impact means impact of implementing SB 207, SB 208, & SB 209; indiv. totals will not add up to combined totals

Source: Sentencing and Policy Advisory Commission March 2003

* For a full discussion of these sentencing alternatives, see The North Carolina Sentencing and Policy Advisory Commission's Report on Study of Structured Sentencing Pursuant to Session Law 2001-424 Section 25.8, May 2002.

Figure 1: Beds Needed Under Current Structured Sentencing Act vs. Beds Needed with Ratification of SB 207, 208, & 209.



NOTE: Ratification of SB 207, 208, and 209 saves the need for 3,156 prison beds by FY 2011-2012
Even with Ratification of SB 207, 208, and 209, there will remain a 4,528 bed deficit by FY 2011-2012.

Table 2: Combined Prison Savings in Prison Beds, Operating and Construction Expenditures for SB 207, 208, 209

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Prison Beds Saved (Cumulative)	0	-651	-1,037	-1,274	-1,535	-1,911	-2,369	-2,786	-3,156
Correction Positions Saved (cumulative)	0	-260	-415	-510	-614	-764	-948	-1,114	-1,262
Operating Expenditures Saved if SB 207, 208, and 209 are Ratified (Mil).	$0.00	($16.70)	($27.39)	($34.66)	($43.02)	($55.16)	($70.43)	($85.32)	($99.55)
Construction Expenditures Saved if SB 207, 208, and 209 are Ratified (Mil).	($80.02)	($19.20)	($22.05)	($33.59)	($42.96)	($41.07)	($42.18)	Unable to project*	Unable to project*

* Unable to project construction expenditures because prison population projections are only available through 2011-2012

The cumulative effect of the combined sentencing bills is to save the need for 3,156 prison beds by 2011-2012. With current costs and projections, by 2011-2012, the State will have saved $432.2 million, cumulative, in operating costs. The State will have saved $281.24 million, cumulative, in forgone construction costs by 2009-2010 (projections for construction costs cannot extend beyond 2009-2010).

TABLE 3: NORTH CAROLINA PRISON POPULATION COMPARED
TO DEPARTMENT OF CORRECTION PRISON BED CAPACITY*
(JANUARY 2003)

Fiscal Yr. Ending	Inmate Pop. Projection*	DOC Expanded Prison Capacity**	**Prison Beds Over/Under**	DOC Standard Prison Capacity	Prison Beds Over/Under
6/30/2003	34,570	31,969	**-2,601**	28,501	**-6,069**
6/30/2004	35,851	34,561	**-1,290**	31,093	**-4,758**
6/30/2005	36,787	34,729	**-2,058**	31,261	**-5,526**
6/30/2006	37,739	34,729	**-3,010**	31,261	**-6,478**
6/30/2007	38,687	34,729	**-3,958**	31,261	**-7,426**
6/30/2008	39,557	34,729	**-4,828**	31,261	**-8,296**
6/30/2009	40,345	34,729	**-5,616**	31,261	**-9,084**
6/30/2010	41,068	34,729	**-6,339**	31,261	**-9,807**
6/30/2011	41,768	34,729	**-7,039**	31,261	**-10,507**
6/30/2012	42,413	34,729	**-7,684**	31,261	**-11,152**

* Population Projections by Sentencing and Policy Advisory Commission, Jan. 2003
DOC Expanded and Standard Operating Capacity as of Dec. 4, 2002 with the 2,592 new beds minus beds lost by closing Blue Ridge and Henderson. **Standard Operating Capacity (SOC) is at 100% (one inmate per cell or up to 50 Sq. Ft. per inmate in dorms). **Expanded Operating Capacity** (EOC) is up to 130% (two inmates in one cell or less than 50 square feet per inmate in dorms. FRD 01/13/03

TABLE 4

NC Prison Population Changes with New Beds and with SB 207, 208, & 209

Fiscal Yr. Ending	Inmate Pop. Projection*	DOC Expan. Capacity**	**Prison Beds Over/Under w/no change**	Prison Beds Over/Under **w/2prisons*** **	Prison Beds Over/Under **w/3 prisons**** **	Prison Beds Over/under **w/SB 207,08,09 & 2 prisons**	Prison Beds Over/Under **w/SB 207,208,209 & 3 prisons**
6/30/2003	34,570	31,969	**-2,601**	-2,601	-2,601	-2,601	-2,601
6/30/2004	35,851	34,561	**-1,290**	-1,290	-1,290	-1,290	-1,290
6/30/2005	36,787	34,729	**-2,058**	-2,058	-2,058	-1,407	-1,407
6/30/2006	37,739	34,729	**-3,010**	-1,282	-1,282	-245	-245
6/30/2007	38,687	34,729	**-3,958**	-2,230	-1,366	-956	-92
6/30/2008	39,557	34,729	**-4,828**	-3,100	-2,236	-1,565	-701
6/30/2009	40,345	34,729	**-5,616**	-3,888	-3,024	-1,977	-1,113
6/30/2010	41,068	34,729	**-6,339**	-4,611	-3,747	-2,242	-1,378
6/30/2011	41,768	34,729	**-7,039**	-5,311	-4,447	-2,525	-1,661
630/2012	42,413	34,729	**-7,684**	-5,956	-5,092	-2,800	-1,936

* Population Projections by Sentencing and Policy Advisory Commission, Jan. 2003

DOC Expanded Capacity as of Dec. 4, 2002 with 2,592 new beds. **Expanded Operating Capacity (EOC) (EOC) is one or two inmates per cell, or less than 50 square feet per inmate in dorms (35 sq ft is 130% of standard capacity)

*** "Prisons" assumes two new prisons with EOC of 1,728 new beds (FY 05-06) or 3 with 2,592 new beds (FY 06-07)

****SB 207, 208 & 209 are (1) Restructure Prior Record Points; (2) Proportionate Sentence Lengths & (3)Adjust B1-E Felonies)

(3)

VISITOR REGISTRATION SHEET

J-1 — 4-17-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[signature]
Steve Woodson	NCFB
LaFonda Jones	NC FAMM, Durham
Laura Sager	NC FAMM
[signature]	NCCO
Tom Bean	Enviro Defense
Rebecca Reeve	God's Institute Alc & SA
S Kerri McClees	McClees Consulting, Inc.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-12-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jo McCants	AOC
Johnson Britt	District Attorney 16B (Robeson Co.)
Peg Dorer	Conference of DAs
Jeff Hunt	Cony of DA's
Jan Keith	Dist Atty 21
Sandy Pearce	DOC
Tracy Little	NCDOC
Boyd Smith	NC DOC
Lynn Phillips	DOC
Ginny Hevener	NC Sentencing Commission
S. Katzenelson	-11- -11-

(2)

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-17-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Erwin Spainhour	Sentencing Commission
Otis Carter	Carter & Assoc.
LAO Rubert	Con Sent. Assc.
Marisa S. Campbell	Meredith College
Tammy Moldovan	Bentley Law offices, Durham
Alice W Penny	Paralegal Services of NC Inc
Bill Wilson	NC Acads of Trial Lawyers
NCATL	NCATL
[illegible]	[illegible]
Paul Pulley	NCATL
GEORGE ALAN EGWORTHY	SELF

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 17, 2003	10:00 a.m.	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB-207	Restructure Prior Crim Record Pts.	Sen. Gulley
SB-208	Sentence Lengths	Sen. Gulley
SB 209	Adjust B1-E Felony Penalties	Sen. Gulley
SB-528	Amend Post- Release Supervision Laws	Sen. Hartsell
SB-761	Enhance Firearms Penalties	Sen. Gulley

Senator Dan Clodfelter, Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	TUESDAY	10:00 a.m.	1027 LB

REVISED NOTICE/SB-996 DELETED/SB-993 ADDED

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
• SB-762	Regional Public Transportation Liability	Sen. Gulley
• SB-776	Workers' Comp/Definition of Employee	Sen. Dalton/Clodfelter
• SB-796	School Board/County Dispute Resolution	Sen. Stevens
• SB-877	Illegal Child Care Facilities	Sen. Purcell
• SB-993	An Act to Safeguard Children	Sen. Garrou
• SB-1011	Health Care Provider Liens	Sen. Berger
•		

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 22, 2003 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with thirteen members present. He introduced Pages, James Williams, from Greensboro and Crystal Riley, from Charlotte, NC.

SB-796 (School Board/County Dispute Resolution) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Richard Stevens explained that the Committee Substitute changes the dispute resolution statute between county commissioners and the local school board over the school budget. See attached Bill Summary for further information. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-1011 (Health Care Provider Liens) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Phillip Berger explained that the bill would give additional direction to persons in charge of distributing money recovered for personal injury. See attached Bill Summary for further information. Senator Wib Gulley moved for a Favorable Report. All members voted yes. Motion carried.

SB-877 (Illegal Child Care Facilities) Committee Substitute was introduced by Senator Clodfelter. Senator Linda Garrou moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator William Purcell explained that the bill would enhance penalties for violations of the Child Care Facilities. The Act would be amended to clarify that all childcare facilities must obtain and display a license. See attached Bill Summary for further information. Staff attorney, Hal Pell explained the changes and penalties in more detail. Senator's Tony Rand and Wib Gulley had questions. Mr. Pell answered the questions. Mr. Roy Sabet, NC Child Care Coalition and Ms. Peggy Ball, NC Child Care Development spoke in support of the bill. Senator David Hoyl offered an amendment to the bill. on page 1, line 27 Senator's Ham Horton David Hoyle; Charlie Albertson and Patrick Ballantine had questions. Ms. June Locklear, Regulatory Advisor of NC and Staff Attorney, Hal Pell answered the questions. Senator Clodfelter stated the bill would be displaced until the next meeting.

SB-993 (An Act to Safeguard Children) Committee Substitute was introduced by Senator Clodfelter. Senator Linda Garrou moved for adoption of the Committee Substitute. All members voted yes. Motion carried. As the bill sponsor, she explained that the bill would require the State Board of Education to automatically revoke the certificate of a teacher or school administrator upon receipt of proof that the person has been convicted of murder, rape or other serious felonies of sexual misconduct or child abuse, and certain violent misdemeanors. See attached Bill Summary for further information. Senator's Tony Rand and Phillip Berger had questions. Staff attorney,

Walker Reagan Staff Attorney and Mr. Harry Wilson, Attorney for NC Board of Education and answered the questions. Ms. Linda Sudds, Liaison for the NC State Board of Education. Senator Clodfelter said the bill would be displaced and heard at a later meeting.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, April 24, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **796** School Board/County Dispute Resolution.

Draft Number:	PCS 65269
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 796
PROPOSED COMMITTEE SUBSTITUTE S796-PCS65269-LE-6

Short Title: School Board/County Dispute Resolution. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR RESOLUTION OF DISPUTES BETWEEN BOARDS OF EDUCATION AND BOARDS OF COUNTY COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-431 reads as rewritten:

"**§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.**

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the ~~chairman~~ chair of the board of education and the ~~chairman~~ chair of the board of county commissioners shall arrange (i) a joint meeting of the two boards ~~to~~ or, (ii) if neither chair wants a joint meeting, mediation of the dispute.

If they arrange a joint meeting, the meeting shall be held within seven days after the day of the county commissioners' decision on the school appropriations. During the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith effort to resolve the differences that have arisen between them.

(a1) ~~Prior to the joint meeting, the~~The Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. ~~The~~ If a joint meeting of the boards is conducted, the mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the boards' differences.

~~At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.~~

(b) If no agreement is reached at the joint meeting of the two boards, or if there is no joint meeting, the mediator shall, at the request of either board, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Unless otherwise agreed upon by both boards, the following individuals shall constitute the two working groups empowered to represent their respective boards during the mediation:

(1) The chair of each board or the chair's designee;

(2) The superintendent of the local school administrative unit and the county manager or either's designee;

(3) The finance officer of each board; and

(4) The attorney for each board.

Members of both boards, their chairs, and representatives shall cooperate with and respond to all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. Reports by members of either working group to their respective boards shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

Unless both boards agree otherwise, or unless the boards have already resolved their dispute, the mediation shall end no later than August 1. The mediator shall have the authority to determine that an impasse exists and to discontinue the mediation. The mediation may continue beyond August 1 provided both boards agree. If both boards agree to continue the mediation beyond August 1, the board of county commissioners shall appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient to equal the local contribution to this fund for the previous year.

If the working groups reach a proposed agreement, the terms and conditions must be approved by each board. If no agreement is reached, the mediator shall announce that fact to the chairs of both boards, the Senior Resident Superior Court Judge, and the public. The mediator shall not disclose any other information about the mediation. The mediator shall not make any recommendations or public statement of findings or conclusions.

The local board of education and the board of county commissioners shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes.

(c) Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an action filed under this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent (3/4 of

1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 796

Short Title:	School Board/County Dispute Resolution.	(Public)
Sponsors:	Senators Stevens; Malone and Smith.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR RESOLUTION OF DISPUTES BETWEEN BOARDS OF EDUCATION AND BOARDS OF COUNTY COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-431 reads as rewritten:

"**§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.**

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education ~~and~~ shall contact the chairman of the board of county commissioners ~~shall arrange~~to request either a joint meeting of the two boards or mediation of the dispute.

If the chairman of the board of education requests a joint meeting of the two boards and if the board of county commissioners agrees to a joint meeting, the meeting shall ~~to~~ be held within seven days after the day of the county commissioners' decision on the school appropriations. During the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith effort to resolve the differences that have arisen between them.

(a1) ~~Prior to the joint meeting, the~~The Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. ~~The~~ If a joint meeting of the boards is conducted, the mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the boards' differences.

~~At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.~~

(b) If no agreement is reached at the joint meeting of the two boards, or if there is no joint meeting, the mediator shall, at the request of either board, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Unless otherwise agreed upon by both boards, the following individuals shall constitute the two working groups empowered to represent their respective boards during the mediation:

(1) The chair of each board or the chair's designee;
(2) The superintendent of the local school administrative unit and the county manager or either's designee;
(3) The finance officer of each board; and
(4) The attorney for each board.

Members of both boards, their chairs, and representatives shall cooperate with and respond to all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. Reports by members of either working group to their respective boards shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

Unless both boards agree otherwise, or unless the boards have already resolved their dispute, the mediation shall end no later than August 1. The mediator shall have the authority to determine that an impasse exists and to discontinue the mediation. The mediation may continue beyond August 1 provided both boards agree. If both boards agree to continue the mediation beyond August 1, the board of county commissioners shall appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient to equal the local contribution to this fund for the previous year.

If the working groups reach a proposed agreement, the terms and conditions must be approved by each board. If no agreement is reached, the mediator shall announce that fact to the chairs of both boards, the Senior Resident Superior Court Judge, and the public. The mediator shall not disclose any other information about the mediation. The mediator shall not make any recommendations or public statement of findings or conclusions.

The local board of education and the board of county commissioners shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes.

(c) Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. The court shall consider other factors affecting the ability of the board of county commissioners to meet the budget request of the board of education, including the prevailing economic conditions, other funding responsibilities of the county, general ability to pay, and tax effort. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools. The jury shall consider other factors affecting the ability of the board of county commissioners to meet the budget request of the board of education, including the prevailing economic conditions, other funding responsibilities of the county, general ability to pay, and tax effort.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an action filed under this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent (3/4 of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1011
PROPOSED COMMITTEE SUBSTITUTE S1011-PCS85217-RR-6

Short Title: Health Care Provider Liens. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44-50 reads as rewritten:

"**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.**

(a) A lien ~~as provided~~ under G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney represents the injured person, the lien is perfected as provided under G.S. 44-49. The lien claimant shall provide the attorney or other holder of funds with an itemized statement, hospital record, or medical report as provided in G.S. 44-49(b), and that statement shall have the same effect as in G.S. 44-49(b). Before their disbursement, any person that receives those funds shall retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services, after having received notice of those claims. Evidence as to the amount of the charges shall be competent in the trial of the action. Nothing in this section or in G.S. 44-49 shall ~~be construed so as to~~ interfere with any amount due for attorney's services. The lien provided for shall ~~in no case,~~ not, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered.

(b) The funds subject to a lien under this Article shall be distributed to each lienholder according to that lienholder's pro rata share of those funds under this Article. The pro rata share of funds shall be based on the remaining balance due of the itemized statements, hospital records, or medical reports furnished to the attorney under G.S.

44-49(b) or subsection (a) of this section as the lienholder's charges to the injured person for supplies or services. ~~Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to the extent that the instructions conflict with the requirements of this Article.~~ An attorney subject to this Article shall not be liable for payment to a lienholder as long as the attorney makes a pro rata distribution based on the balance due itemized statements, hospital records, or medical reports furnished to the attorney under G.S. 44-49(b) or subsection (a) of this section, nor shall the attorney be liable in the event of a good faith miscalculation of the perfected lien amount owing at the time of distribution. If the attorney's client or any other party disputes a claim as provided in G.S. 44-51, the attorney is not liable for pro rata distribution to the lienholder of the claim disputed under G.S. 44-51 until the dispute is resolved."

SECTION 2. Article 9 of Chapter 44 of the General Statutes is amended by adding a new section to read:

"**§ 44-50.1. Accounting of disbursements; attorney's fees to enforce lien rights.**

(a) Any person distributing funds to a lienholder under this Article in an amount less than the amount claimed by that lienholder shall provide to that lienholder upon written request a certification with sufficient information to demonstrate that the distribution was pro rata and consistent with this Article, including a statement of all of the following:

(1) The total amount of the settlement.

(2) The total distribution to lienholders and the percentage of each lien paid but not the identity of other lienholders.

(3) The total attorney's fees.

If the person distributing settlement or judgment proceeds is an attorney, the accounting required by this section is not a breach of the attorney-client privilege. The lienholder shall have the same duty of confidentiality with the contents of the accounting as the attorney of the injured party.

(b) In an action brought by any party to enforce its rights under this Article, the presiding judge may award reasonable attorney's fees to be taxed against the nonprevailing party as part of court costs and payable to the prevailing party."

SECTION 3. This act is effective when it becomes law and applies to any liens perfected on or after that date.

SENATE BILL 1011:
Health Care Provider Liens.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Berger
Date:	April 10, 2003	**Summary by:**	William R. Gilkeson
Version:	S1011-CSRR-6 [v.12]		Committee Co-Counsel

SUMMARY: Senate Bill 1011 would give addition direction to persons in charge of distributing money recovered for personal injury. It would require that where more than one provider of health supplies and services holds a lien on the funds, the distributor would parcel out the funds to each lienholder according to that lienholder's pro rata share of the funds. Effective when the bill becomes law; applies to liens perfected on or after that date.

CURRENT LAW: G.S. Chapter 44 sets up a system of liens, including liens for providers of health supplies and services against damages received by injured parties in personal injury lawsuits and otherwise. *Article 9 of Ch. 44.* For a provider's lien to be valid in a case, the provider must give to the attorney for the injured person an itemized statement of costs incurred and other records. *G.S. 44-49, copied on back of this page.* The attorney for the injured party (or some other designated person) is directed to distribute the money to the lienholders. *G.S. 44-50, amended in bill.*

BILL ANALYSIS:

Pro Rata Distribution. The PCS for HB 1011 would provide that the person distributing money to the health care lienholders must do so to each according to that lienholder's pro rata share of the funds. That pro rata share is to be based on the itemized statements the lienholder provided to the injured person's attorney. *Section 1 of the bill.*

Protection for Attorney-Distributor. The PCS holds an attorney distributing the funds harmless for any pro rata distribution based on the itemized statements, even if the attorney makes a good faith miscalculation. If a claim is in dispute, the attorney is not liable make a pro rata distribution to that lienholder until the dispute is resolved. *Section 1.* ***ADDED IN PCS.***

Accounting and Confidentiality. The PCS also would give a lienholder who received less than the full amount of the lien, upon written request, a written accounting of the damage proceeds distributed, showing percentages but not names. The lienholder who receives that accounting shall treat it with the same confidentiality that would be required of the injured person's attorney. If the person doing the distributing is an attorney, making the accounting is not a breach of attorney-client privilege. *Section 2.* ***CHANGED IN PCS.***

Attorney's Fees. Finally, the PCS states that a judge has the authority to grant attorney's fees to a anyone who litigates to enforce any rights under Article 9. Those attorney's fees would be taxed as part of court costs and paid by the nonprevailing party to the prevailing party. *Section 2.* ***CHANGED IN PCS.***

Article 9.

Liens upon Recoveries for Personal Injuries to Secure Sums Due for Medical Attention, etc.

§ 44-49. Lien created; applicable to persons non sui juris.

(a) From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this State. This lien is in favor of any person, corporation, State entity, municipal corporation or county to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services rendered in connection with the injury in compensation for which the damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, the liens shall attach to the sum recovered as fully as if the person were sui juris.

(b) Notwithstanding subsection (a) of this section, no lien provided for under subsection (a) of this section is valid with respect to any claims whatsoever unless the physician, dentist, nurse, hospital, corporation, or other person entitled to the lien furnishes, without charge to the attorney as a condition precedent to the creation of the lien, upon request to the attorney representing the person in whose behalf the claim for personal injury is made, an itemized statement, hospital record, or medical report for the use of the attorney in the negotiation, settlement, or trial of the claim arising by reason of the personal injury, and a written notice to the attorney of the lien claimed.

(c) No action shall lie against any clerk of court or any surety on any clerk's bond to recover any claims based upon any lien or liens created under subsection (a) of this section when recovery has been had by the person injured, and no claims against the recovery were filed with the clerk by any person or corporation, and the clerk has otherwise disbursed according to law the money recovered in the action for personal injuries. (1935, c. 121, s. 1; 1947, c. 1027; 1959, c. 800, s. 1; 1967, c. 1204, s. 1; 1969, c. 450, s. 1; 2001-377, s. 1; 2001-487, s. 59.)

§ 44-49.1: Recodified as § 58-3-135 by Session Laws 1995 (Regular Session, 1996), c. 674, s. 1.

§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.

A lien as provided under G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney represents the injured person, the lien is perfected as provided under G.S. 44-49. Before their disbursement, any person that receives those funds shall retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services, after having received notice of those claims. Evidence as to the amount of the charges shall be competent in the trial of the action. Nothing in this section or in G.S. 44-49 shall be construed so as to interfere with any amount due for attorney's services. The lien provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered. Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to the extent that the instructions conflict with the requirements of this Article. (1935, c. 121, s. 2; 1959, c. 800, s. 2; 1969, c. 450, s. 2; 1995 (Reg. Sess., 1996), c. 674, s. 3; 2001-377, s. 2.)

§ 44-51. Disputed claims to be settled before payments.

Whenever the sum or amount or amounts demanded for medical services or hospital fees shall be in dispute, nothing in this Article shall have any effect of compelling payment thereof until the claim is fully established and determined, in the manner provided by law: Provided, however, that when any such sums are in dispute the amount of the lien shall in no case exceed the amount of the bills in dispute. (1935, c. 121, s. 3; 1943, c. 543.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1011

Short Title:	Health Care Provider Liens.	(Public)
Sponsors:	Senator Berger.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF HEALTH CARE PROVIDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44-50 reads as rewritten:

"**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.**

(a) A lien ~~as provided~~ under G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney represents the injured person, the lien is perfected as provided under G.S. 44-49. Before their disbursement, any person that receives those funds shall retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services, after having received notice of those claims. Evidence as to the amount of the charges shall be competent in the trial of the action. Nothing in this section or in G.S. 44-49 shall ~~be construed so as to~~ interfere with any amount due for attorney's services. The lien provided for shall ~~in no case,~~ not, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered.

(b) The funds subject to liens under this Article shall be distributed to each health care provider that holds a lien according to that provider's pro rata share of these funds. If the injured person is represented by an attorney, the pro rata share of these funds shall be based on the remaining balance due of the itemized statements furnished to the attorney under G.S. 44-49(b) as the provider's charges to the injured person for medical supplies or services. Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to the extent that the instructions conflict with the requirements of this Article."

SECTION 2. Article 9 of Chapter 44 of the General Statutes is amended by adding a new section to read:

"**§ 44-50.1. Accounting of disbursements; attorney's fees to enforce lien rights.**

(a) Any health care provider who holds a lien under this Article and who receives payment in an amount less than the amount claimed by the provider as due and payable shall be entitled, upon the provider's request, to receive from the person who under G.S. 44-50 received any funds for distribution, a written accounting of all settlement or judgment proceeds distributed. The accounting shall include the total amount recovered from the settlement or judgment, the amount of attorneys' fees, the amount of any costs associated with the negotiation or litigation of the claims that are paid from the total amount recovered, the amounts claimed by all other health care providers, the amounts actually distributed to all other health care providers, and the amount received by the injured party. If the person distributing settlement or judgment proceeds is an attorney, the accounting required by this section is not a breach of the attorney-client privilege.

(b) In any action brought by a health care provider to enforce its lien rights under this Article, the presiding judge may award reasonable attorney's fees to be taxed as part of court costs and payable to the prevailing party."

SECTION 3. This act is effective when it becomes law and applies to any liens perfected on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 877
PROPOSED COMMITTEE SUBSTITUTE S877-CSRK-36 [v.3]

4/21/2003 5:13:38 PM

Short Title: Child Care Facilities/Penalties. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PENALTIES FOR VIOLATIONS OF THE CHILD CARE FACILITIES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

(a) Any person who violates the provisions of G.S. 110-98 ~~through G.S. 110-99 or G.S. 110-102~~ shall be guilty of a Class 1 ~~misdemeanor, except that any person operating a family child care home as defined in G.S. 110-86(3) who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 3 misdemeanor.~~ misdemeanor. Violations of G.S. 110-98(2), G.S. 110-99(b), G.S. 110-99(c), and G.S. 110-102 are exempted from the provisions of this subsection.

(b) Any person who operates a child care facility and who

(1) willfully violates the provisions of G.S. 110-99(a), or

(2) willfully violates the provisions of this Article while providing child care for more than two children, for more than four hours per day on two consecutive days,

is guilty of a Class I felony.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, is guilty of a Class H felony.

(d) Any person who violates subsection (a), and has a prior conviction for violating subsection (a), shall be guilty of a Class H felony."

SECTION 2. G.S. 110-99 reads as rewritten:

"**§ 110-99. ~~Display~~ Possession and display of license.**

(a) It shall be unlawful for a child care facility to operate without a current license, or a current provisional license, issued pursuant to G.S. 110-93(b).

~~(a)~~(b) Each child care facility shall display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the rating is changed.

~~(b)~~(c) A person who provides only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall notify the Department that the person is providing only drop-in or short-term child care. Any person providing only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department."

SECTION 3. This act is effective on December 1, 2003, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 877

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S877-ARK-10 [v.2]

Date 4-22 ,2003

Comm. Sub. [YES]
Amends Title [NO]

Senator Hoyce

moves to amend the bill on page 1, line 27, by deleting the words:

"license, or a current provisional license, issued pursuant to G.S. 100-93(b).", and by substituting the following:

"license, authorized for issuance under G.S. 110-88."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

SENATE BILL 877:
Child Care Facilities/Penalties.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Purcell
Date:	April 22, 2003	**Summary by:**	H. Alan Pell
Version:	PCS [S877-CSRK-36]		Committee Co-Counsel

SUMMARY: ***This bill would enhance penalties for violations of the Child Care Facilities Act. The Act would be amended to clarify that all child care facilities must obtain and display a license. The act would be effective on December 1, 2003, and would apply to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1 of the bill provides that:

- Violations by child care facilities, except for the noted exclusions, remain as Class 1 misdemeanors. Violations by family child care homes would also become Class 1 misdemeanors (currently Class 3).
- Persons who operate without a license, in willful violation of the Act's requirement to have a license, would be subject to conviction as a Class I felon.
- Persons who provide child care to two or more children, for more than four hours a day on two consecutive days, and who willfully violate the Act's provisions, would be subject to conviction as a Class I felon.
- A person who violates the Act and, as a result, causes serious injury to a child attending the child care facility, would be subject to conviction as a Class H felon.
- A person who violates the Act, and has a prior misdemeanor conviction for violating the Act, would be subject to conviction as a Class H felon.

Section 2: Clarifies that it is unlawful to operate a child care facility without a license. The current statute refers to the statute which provides for the application process.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

Examples of Illegal Child Care Providers

A. Cases with Criminal Warrants of Illegal Child Care

1. **Flagrant Violation of Law and Death of Child** *(prompted Kaitlyn's Law)*
In Alamance County, a five-month-old died while in an illegal family child care home. SIDS was listed as the cause of death. Upon investigation it was determined that the provider had administered a generic brand of Benedryl to the child. This provider had been investigated three times before based on reports of illegal child care. There had been a previous SIDS death in this home that was never reported to the county Dept. of Social Services or state Division of Child Development. An arrest warrant was issued. The provider pled guilty and was sentenced to 120 days imprisonment.

2. **Flagrant Violation of Law and Endangerment of Children**
A report was received from county Department of Social Services of a possible illegal facility. A substantiation of neglect was confirmed. Division of Child Development consultants investigated the home and found 12 children ages one to eight-years old in care. Transportation was being provided in a personal vehicle with capacity of seven people. The consultant witnessed 10 preschoolers, two teenagers and the driver climbing into the seven-passenger mini-van and driving away. The consultants talked with the adult in the home describing in detail the applicable laws and child care rules. The provider said that she was aware of the rules because she had been a registered provider before and her certificate was taken away at a different address. She stated that all the children were related to her but failed to provide the documentation of their relationship as requested by the consultants.

3. **Intent to Commit Fraud**
The Child and Adult Food Care Program (CAFCP), a federal meals reimbursement program, received a fraudulent family child care home license with a CAFCP application. The illegal provider reported having a capacity of 25 children on the CAFCP application in order to receive meal expense reimbursement. The Division of Child Development verified that she was caring illegally for 12 children.

4. **Penalty not Great Enough to Merit Court's Attention**
In another case an adult family member in an illegal home threatened the consultants if they came again to investigate. The local police escorted the consultants on the next visit to observe the illegal care. A criminal summons was issued. A court date was set for the provider to appear. The District Court Judge acknowledged the Division of Child Development staff and the illegal provider in the courtroom and indicated that this was a low-level misdemeanor and a waste of his time and dismissed the case.

5. **Provider Continually Violates Law After Repeated Arrests and Convictions**
In another situation, a provider was reported by the county Department of Social Services to be caring for preschool-age children without being licensed. Six to seven preschoolers, ages one to five-year old, were in care. The Division of Child Development consultant advised the provider about the mandate to be licensed. Further investigation by the Division determined that the provider was operating with at least three different names in different locations. None of these facilities were licensed. The provider transported children from house to house during the day to avoid detection. Over a two-year period, three criminal arrest warrants each under different names were served on the provider. At trial, she pled guilty on the charges and received a 30 day suspended sentence plus 18 to 24 months of supervised probation and was ordered to not to

provide child care without complying with the licensing law. Even so, on two occasions since being sentenced, she was found providing care without being licensed.

6. **Provider Neglect and Drug Possession**
The county Department of Social Services contacted the Division of Child Development consultant to report an illegal home provider was reported growing marijuana and selling it from the house, with preschool age children playing in the yard. The provider's nine-year-old child was often left to care for the children while the provider left the house. A neighbor of the provider reported to police that the provider and her husband frequently drove away from the home in a pick up truck with the "six little kids" in the back bed of the truck. The provider's husband was charged with possession and selling of drugs and pled guilty of a lesser charge of simple possession. The provider stopped caring for children after she was charged with neglect of her own children.

7. **Provider Violates Law with Intent and Endangers Children with Medication**
A licensed foster parent was investigated for administering a medication, "Terpin Hydrate Elixer," which has an alcohol content of 41.5%, without the parent's permission. This person was found to be caring for at least five children during the investigation. The administration of the medication to a two-year-old along with leaving children unsupervised was verified. An advertisement was found in the local newspaper for the "licensed center" while an assault charge was pending in County District Court.

8. **Risk of Serious Injury not Reflected in Penalty**
Frequently, illegal providers have been observed transporting too many children for the capacity of the vehicle. In one illegal situation, the consultants investigating found 15 children in a mini van, loaded in the seats, the aisles and cargo space. The provider received a sentence of six to twelve-month unsupervised probation and payment of court costs.

9. **Provider Intentionally Continues to Violate Law**
A county provider's child care home license was terminated by the Division of Child Development for failure to comply with requirements for adequate care. An investigation of domestic violence in the home prompted the social worker to visit. At that time, the provider was caring for children without being licensed. After this was reported to the Division of Child Development, visits on four separate occasions found children were in care in the unlicensed facility. The provider said she knew she was illegal, but that she was not going to stop caring for children. She was issued a criminal summons and two criminal arrest warrants. She was convicted of operating an illegal child care facility and was sentenced to 12 months of unsupervised probation. It was further revealed that she had been convicted of forgery and was on supervised probation at the time of her arrest for operating an illegal child care facility. Her probation has been increased to intensive supervised probation until June 2003. Since her conviction of operating an illegal child care facility, she has once again been observed providing illegal care. The county Department of Social Services continues their domestic violence investigation with ongoing visits.

Examples of Illegal Child Care Providers

10. Provider Operates Illegally After License Terminated

Over the period of a year, reports of five abuse/neglect incidents alleging that children sustained broken bones, bruises, and that a pacifier became lodged in an infant's throat were investigated by county Department of Social Services in the same home. Child abuse was not substantiated because of insufficient evidence that the injuries occurred in facility. The provider was operating an illegal child care arrangement. An arrest warrant was issued and the provider pled guilty at trial. She was given a sentence of 12 months unsupervised probation. This provider had operated a licensed home in the early 1990's. Her license had been terminated because of inadequate care and inappropriate discipline.

11. Provider Operates Illegally After License Terminated; Sexual Abuse Incident

A report alleging that child sexual abuse had occurred in an unlicensed family child care home was received by the Division of Child Development from county Department of Social Services. Upon investigation, it was determined that the provider had failed to properly supervise the five children who were receiving care in the illegal home. A juvenile member of the provider's family took a four-year-old child into a separate room and sexually assaulted the child. The provider was issued a criminal summons. At trial, she pled guilty to a Class 1 misdemeanor. She received a 30day suspended sentence and 18 months of supervised probation. The provider had previously been licensed, but had decided not to renew her license. However, she operated her unlicensed, illegal child care home without detection for approximately 10 years until the sexual abuse incident came to light.

12. Illegal Provider Went Shopping and Left Infant Unsupervised at Home

The county Department of Social Services substantiated child neglect in a case involving a six-month-old who was left alone in a house while the provider was shopping with the other children. The facility was not licensed. Two criminal summons were served on the provider. She pled guilty to a Class 1 misdemeanor and received 12 months of unsupervised probation.

13. Children Sexually Abused; No Charges After Provider Ceased Operation

County Department of Social Services reported a substantiation of child neglect in an illegal day care home. The substantiation was based on inadequate supervision of the children in care resulting in several children being seriously harmed when they were sexually abused by members of the provider's family. At the time of the investigation, the provider was caring for children without being licensed. However, when Division of Child Development visited the home, the provider was no longer operating a family child care home. Unannounced monitoring visits continued to assure that child care was not being provided. Neither an arrest warrant or criminal summons was issued because the provider had ceased operation. The police continued with the investigation of the sexual abuse incident, but the parents of the children were reluctant to prosecute because of the age of their children and length of time since the incidents occurred.

Examples of Illegal Child Care Providers

B. Abuse and Neglect Investigations by County Department of Social Services that Uncovered Illegal Child Care

- A six-month-old infant was left unsupervised in a home while the illegal provider drove away for approximately 15 minutes. The infant's parent arrived at the home to find her child alone in the house and called the police to rescue her child. There were five children in care at the time of the incident.

- A three-month-old infant sustained bruising to the insides of his legs when his legs were pulled through the crib railings by another child. The same infant received an unexplained bump to his head and bruised ear. It was also verified the infant laid in his vomit for an undetermined amount of time, which caused a rash on his face. There were eight children in care by the illegal provider.

- A six-week-old infant was taken from an illegal provider's home to a hospital emergency room. The infant was diagnosed with subdural hemotaosis and was having seizures. Emergency room physicians stated the infant's injuries were not consistent with an accident, and were consistent with Shaken Baby Syndrome. Criminal charges of abuse were filed.

- Four preschool age children were left alone with an illegal provider's husband who was a convicted sex offender, a recovering alcoholic, and drug abuser.

- A nine-year-old stated that he was "smacked" seven or eight times in the face and his hair pulled by an illegal provider. It was reported that on other occasions children were picked up by their arms and spanked with the provider's hand. The illegal provider admitted to slapping the nine-year-old on several occasions. The investigation verified six children in care, ranging in ages from one year to 10 years old.

- A four-year-old was left alone in a park when an illegal provider and five other children left in her car. The victim child was found by an adult who called the police. The provider later returned to the park leaving the other children home alone but couldn't find the child and called the police. The police were caring for the child at the police station while trying to contact a relative.

- An illegal provider's husband sexually abused a nine-year-old child in care. The husband stated to police that the child initiated the sexual contact and that he was intoxicated most days the children were there. The investigation documented many children in care on different days, some of which were grandchildren, but with unrelated children also present. The husband was charged with first degree statutory sex offense and taking indecent liberties with a minor. The provider stated that she napped with the younger children, and her husband had sole responsibility of the school age children. It was also determined by the social worker that an unsafe environment existed for the children. Both adults were in declining health due to high blood pressure, diabetes, severe arthritis, and seizures.

Examples of Illegal Child Care Providers

- A three-year-old child was sexually abused by a household member of an illegal provider. The provider stated that she was not aware of the incidents, however, the perpetrator admitted to the sexual abuse and said that the provider was in the home at the time of the abuse. Criminal charges were dismissed. The perpetrator is awaiting placement in a treatment center.

- A 20-month old received severe bruising to her shoulders and neck while in an illegal home. The provider was in the kitchen preparing lunch and the toddler was left alone with three preschool age children. The investigation revealed that the provider said she heard two "thuds" and the child cry. Returning to the living room she found the toddler upside down on hard toys, stuck between boxes and the wall. The child's mouth was bleeding. Later in the afternoon she left the four children in the care of her fifteen-year-old daughter. The parents picked up the child while the provider was out, with the fifteen-year-old left in charge. They noticed the bruising and took the child to an emergency room. The medical evaluation determined that the injuries were not consistent with the account given by the illegal provider. The police were unable to gather sufficient evidence to file criminal charges and the case was closed.

- An illegal provider was found to be using inappropriate methods of discipline. It was verified by Department of Social Services that the provider placed duct tape on the mouth of a three-year-old, kept preschool age children in high chairs in the corner for at least three hours, and used a paint paddle or a fly swatter to spank children.

- A three-year-old child was sexually abused in the home of an illegal provider. The fourteen-year-old child of the provider was accused of the abuse. The juvenile was often left with the preschool age children while the provider completed household tasks. They often played in the bedroom with the juvenile. The sheriff could not charge the juvenile but the illegal provider was charged with neglect. The parents of the juvenile would not agree to counseling as requested by the sheriff's department.

- Many other counties have reported sexual abuse of children in care of an illegal provider. Cases from Columbus, Craven, Cumberland, Duplin, Durham, Franklin, Granville, Halifax, Johnston, Mecklenburg, Pitt, Rowan, Vance, Wake, and Wilson Counties are listed above.

S877 Child Care Facilities/Penalties

Definition of Child Care: G.S. 110-86 (2)
A program or arrangement where:

- three or more children less than 13 years old, and
- who do not reside where the care is provided, and
- receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day
- from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

These arrangements are <u>not</u> Child Care: G.S. 110-86 (2) (a) – (j)

(a.) Arrangements operated in the home of any child receiving care if all the children in care are related to each other and no more than two additional children are in care;
Example: A grandmother caring for her grandchildren

(b.) Recreational programs operated for less than four consecutive months in a year;
Example: Summer day camps

(c.) Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;

(d.) Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
Example: Drop-in care provided at a health club

(e.) Public schools;

(f.) Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site;
Example: Private schools

(g.) Bible schools conducted during vacation periods;

(h.) Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;
Example: Residential child care facilities

(i). Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and

(j.) Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component.
Example: Mother's Morning Out programs

Definition of Child Care Facility: G.S. 110-86 (3)
Includes child care centers, family child care homes, and any other child care arrangement not excluded in the list above, that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

S877 Child Care Facilities/Penalties

Definition of Child Care: G.S. 110-86 (2)
A program or arrangement where:

- three or more children less than 13 years old, and
- who do not reside where the care is provided, and
- receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day
- from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

These arrangements are <u>not</u> Child Care: G.S. 110-86 (2) (a) – (j)

(a.) Arrangements operated in the home of any child receiving care if all the children in care are related to each other and no more than two additional children are in care;
Example: A grandmother caring for her grandchildren

(b.) Recreational programs operated for less than four consecutive months in a year;
Example: Summer day camps

(c.) Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;

(d.) Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
Example: Drop-in care provided at a health club

(e.) Public schools;

(f.) Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site;
Example: Private schools

(g.) Bible schools conducted during vacation periods;

(h.) Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;
Example: Residential child care facilities

(i). Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and

(j.) Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component.
Example: Mother's Morning Out programs

Definition of Child Care Facility: G.S. 110-86 (3)
Includes child care centers, family child care homes, and any other child care arrangement not excluded in the list above, that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 877 1st Edition

SHORT TITLE: Illegal Child Care Facilities

SPONSOR(S): Senator Purcell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring		Unable to determine exact amount.			
Nonrecurring					
Judicial					
Recurring		Unable to determine exact amount.			
Nonrecurring					
TOTAL EXPENDITURES:		Unable to determine exact amount.			
ADDITIONAL PRISON BEDS*		Unable to determine exact number of beds; no substantial impact anticipated.			
POSITIONS: (cumulative)		Unable to determine exact amount; additional positions not anticipated.			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch

EFFECTIVE DATE: Effective When It Becomes Law

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY[1]: SB 877 increases the punishment for the illegal operation of a child care facility from a misdemeanor to a felony. Current G.S. 110-103 provides that it is a Class 1 misdemeanor (Class 3 misdemeanor for an operator of a family child care home) to offer or provide child care without complying with the provisions of Article 7 of Chapter 110 governing child care facilities, including (1) advertising without disclosing the child care facility's identifying number that is on the license or letter of compliance (G.S. 110-98); (2) failing to display a current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license (G.S. 110-99); and (3) failing to distribute to the parents, guardian, or full-time custodian of each child receiving child care at the facility a document containing the provisions of Article 7 as summarized by the Secretary of the Department of Health and Human Services (G.S. 110-102).

SB 877 would make violations of the above statutes a felony for an operator of *any* type of child care facility to violate the provisions of Article 7. It is a Class I felony to (1) operate a child care facility as defined in G.S. 110-86(3) in knowing and willful violation of Article 7; or (2) operate a child care facility as defined in G.S. 110-86(3) and knowingly and willfully provide child care for more than 2 children for more than 4 hours per day on 2 or more consecutive days. A second or subsequent conviction of either provision is punishable as a Class H felony.

It is a Class H felony if violation of either of the above provisions (1) results in the creation of an unreasonable risk of harm to a child attending the facility; or (2) results in serious injury to a child attending the facility.

New subsection (f) provides that this bill does not apply to any person who, within 24 hours of notification of an Article 7 violation, complies with all applicable laws and rules and where there is no evidence that a child has been harmed as a result of the violation.

ASSUMPTIONS AND METHODOLOGY:

Data from the Department of Health and Human Services, Division of Child Development, reveal that there were 273 reports of illegal child care operations in 2002. Of those, 84 were found to be operating illegally. Once determined illegal, the caregivers must reduce the number of unrelated children they care for to two children, which is allowed under state law, or become a legal certified child care home through the star-rated licensure program.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five*

[1] AOC Research and Planning Division

year Fiscal Note horizon and beyond. The number of beds needed will always be equal to the projected number of inmates due to a bill.

Since HB 241 subsections (a) and (b)[2] create two new Class I felony offenses, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were ten Class I convictions under this proposed subsection per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days.) In contrast, Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 9 percent of Class I felony offenders were sentenced to active sentences, 36 percent were sentenced to intermediate sanctions, and 55 percent were sentenced to community punishment. On average, offenders served between eight and nine months. Convictions that increase Class 1 and 3 misdemeanors to Class I felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Since subsections (c), (d), and (e) of the bill creates a new Class H felony offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were three Class H convictions under this proposed subsection per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Class H felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 34 percent of Class H felony offenders were sentenced to active sentences, 50 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between ten and twelve months. The number of second or subsequent convictions of G.S. 110-86(3) or G.S. 110-103 that may result from this bill is unknown. It is also unknown the number of convictions that may result from violations of HB 241 that will result in the creation of an unreasonable risk of harm to a child attending the facility; or will result in serious injury to a child attending the facility.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This

[2] As currently written subsection (b) makes it a Class I felony for a person to operate a child care facility and knowingly and willingly provide child care for more than two children for more than four hours per day on two or more consecutive days. For this analysis, it is assumed that the crime in subsection (b) is to operate in violation of the Article.

increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The AOC has no data regarding the number of charges filed under the existing misdemeanor provisions, or other data from which to estimate the number of charges that could arise from this bill. The term "serious injury" is not defined, and a broad construction could lead to many Class H felony charges. "Serious injury" under current G.S. 14-33 (Class A1 misdemeanor assault) includes serious physical injury as well as damage other than bodily injury, such as economic damage. "Serious bodily injury" is defined in current G.S. 14-32.4 (Class F felony assault) as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, permanent or protracted condition that causes extreme pain, permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is $4,637. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $255. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is $5,012. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $283.

SOURCES OF DATA: Department of Health and Human Services - Division of Child Development, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: The bill date is effective when it becomes law. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2004-05. If the bill becomes effective prior to December 1, there will be an impact on prison system in the 2003-04 fiscal year.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser
and
Lisa Hollowell

APPROVED BY: James D. Johnson, Director, Fiscal Research Division

April 21, 2003

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

4-22-03 AM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Harry Wilson	St. Bd. of Educ.
Linda Suggs	"
Katherine Joyce	NCASA
Joe Glodek	National Drug Search LLC
Ed Regan	N.C.A.C.C.
JOHN BUSSIAN	NCPA
JERI SAYLOR	"
TED VADEN	Chapel Hill News
June Locklear	DHHS - DCD
Peggy Ball	DHHS - DCD
Starla McKamey	DHHS

(2)

VISITOR REGISTRATION SHEET

J-1 — 4-22-03 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LaTaya Fore	DJSDP- CPSV
Amy Ross	intern- Sen. Dalton
Tasha Clay	YAIO
Dallas Baker	Intern - Sen. Gulley
Angela D. Williamson	Citizen Gaston County 1426 N. Caldwell St. Gastonia NC 28052
Joyce Brison	Child Care Information + Child Care Answer
Sherry L Bowers	Partnership for Children of Lincoln Gaston Counties
Hal Miller	NCAECT
A Solari	NCPC - Smart Start
[illegible] GP	NCFB
Glenn Lawson	UTU

VISITOR REGISTRATION SHEET

(3)

J-1 — 4-22-03 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Westbrook	UTU
Roy Williams	UNC
Dick Taylor	NCAA
Victor Farmer	ATT
Hank Patterson	Attorney
Beau Mills	NCLM
Bill Wilson	NC Academy of Trial Lawyers
James Andrews	NC State AFL-CIO

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	TUESDAY	10:00 ~~a.m.~~ p.m.	1027 LB

REVISED NOTICE/SB-996 DELETED/SB-993 ADDED

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
• SB-762	Regional Public Transportation Liability	Sen. Gulley
• SB-776	Workers' Comp/Definition of Employee	Sen. Dalton/Clodfelter
• SB-796	School Board/County Dispute Resolution	Sen. Stevens
• SB-877	Illegal Child Care Facilities	Sen. Purcell
• SB-993	An Act to Safeguard Children	Sen. Garrou
• SB-1011	Health Care Provider Liens	Sen. Berger
•		

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 22, 2003 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 5:50 p.m. with ten members present.

SB-877 (Illegal Child Care Facilities) Committee Substitute was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter offered an Amendment to page 1, line 16, and moved for adoption of the Amendment. All members voted yes. Motion carried. See attached Amendment. No discussion. Senator Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-776 (Workers' Comp/Definition of Employee) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Phillip Berger, Chairman of the J-1 Subcommittee explained the language change. Bill sponsor, Senator Walter Dalton thanked the committee for their assistance. Senator Charlie Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-993 (An Act to Safeguard Children) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained changes made to the bill since it was heard during the morning J-I meeting. No further discussion. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 6:45 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, April 23, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **776** Workers' Comp/Definition of Employee.

Draft Number:	PCS 55183
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **877** Illegal Child Care Facilities.

Draft Number:	PCS 85218
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **993** An Act to Safeguard Children.

Draft Number:	PCS 35253
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1011** Health Care Provider Liens.

Draft Number:	PCS 85217
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 877
PROPOSED COMMITTEE SUBSTITUTE S877-PCS85218-RK-36

Short Title: Child Care Facilities/Penalties. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PENALTIES FOR VIOLATIONS OF THE CHILD CARE FACILITIES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

(a) Any person who violates the provisions of G.S. 110-98 ~~through G.S. 110-99 or G.S. 110-102~~ shall be guilty of a Class 1 ~~misdemeanor, except that any person operating a family child care home as defined in G.S. 110-86(3) who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 3 misdemeanor.~~ misdemeanor. Violations of G.S. 110-98(2), 110-99(b), 110-99(c), and 110-102 are exempted from the provisions of this subsection.

(b) Any person who operates a child care facility and who:

(1) Willfully violates the provisions of G.S. 110-99(a), or

(2) Willfully violates the provisions of this Article while providing child care for more than two children, for more than four hours per day on two consecutive days, is guilty of a Class I felony.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, is guilty of a Class H felony.

(d) Any person who violates subsection (a) of this section, and has a prior conviction for violating subsection (a), shall be guilty of a Class H felony."

SECTION 2. G.S. 110-99 reads as rewritten:

"**§ 110-99. ~~Display~~ Possession and display of license.**

(a) It shall be unlawful for a child care facility to operate without a current license authorized for issuance under G.S. 110-88.

~~(a)~~(b) Each child care facility shall display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe

any rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the rating is changed.

~~(b)~~(c) A person who provides only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall notify the Department that the person is providing only drop-in or short-term child care. Any person providing only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 877:
Child Care Facilities/Penalties.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Purcell
Date:	April 22, 2003	**Summary by:**	H. Alan Pell
Version:	PCS [S877-CSRK-36]		Committee Co-Counsel

SUMMARY: ***This bill would enhance penalties for violations of the Child Care Facilities Act. The Act would be amended to clarify that all child care facilities must obtain and display a license. The act would be effective on December 1, 2003, and would apply to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1 of the bill provides that:

- Violations by child care facilities, except for the noted exclusions, remain as Class 1 misdemeanors. Violations by family child care homes would also become Class 1 misdemeanors (currently Class 3).
- Persons who operate without a license, in willful violation of the Act's requirement to have a license, would be subject to conviction as a Class I felon.
- Persons who provide child care to two or more children, for more than four hours a day on two consecutive days, and who willfully violate the Act's provisions, would be subject to conviction as a Class I felon.
- A person who violates the Act and, as a result, causes serious injury to a child attending the child care facility, would be subject to conviction as a Class H felon.
- A person who violates the Act, and has a prior misdemeanor conviction for violating the Act, would be subject to conviction as a Class H felon.

Section 2: Clarifies that it is unlawful to operate a child care facility without a license. The current statute refers to the statute which provides for the application process.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 877

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S877-ARK-12 [v.1]

Date 4-22-03 ,2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Senator Clodfelter

moves to amend the bill on page 1, line 16, by deleting the words:

"more than two", and substituting the words,

"three or more".

SIGNED Daniel G. Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 877 1st Edition

SHORT TITLE: Illegal Child Care Facilities

SPONSOR(S): Senator Purcell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring		Unable to determine exact amount.			
Nonrecurring					
Judicial					
Recurring		Unable to determine exact amount.			
Nonrecurring					
TOTAL EXPENDITURES:		Unable to determine exact amount.			
ADDITIONAL PRISON BEDS*		Unable to determine exact number of beds; no substantial impact anticipated.			
POSITIONS: (cumulative)		Unable to determine exact amount; additional positions not anticipated.			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch

EFFECTIVE DATE: Effective When It Becomes Law

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY[1]: SB 877 increases the punishment for the illegal operation of a child care facility from a misdemeanor to a felony. Current G.S. 110-103 provides that it is a Class 1 misdemeanor (Class 3 misdemeanor for an operator of a family child care home) to offer or provide child care without complying with the provisions of Article 7 of Chapter 110 governing child care facilities, including (1) advertising without disclosing the child care facility's identifying number that is on the license or letter of compliance (G.S. 110-98); (2) failing to display a current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license (G.S. 110-99); and (3) failing to distribute to the parents, guardian, or full-time custodian of each child receiving child care at the facility a document containing the provisions of Article 7 as summarized by the Secretary of the Department of Health and Human Services (G.S. 110-102).

SB 877 would make violations of the above statutes a felony for an operator of *any* type of child care facility to violate the provisions of Article 7. It is a Class I felony to (1) operate a child care facility as defined in G.S. 110-86(3) in knowing and willful violation of Article 7; or (2) operate a child care facility as defined in G.S. 110-86(3) and knowingly and willfully provide child care for more than 2 children for more than 4 hours per day on 2 or more consecutive days. A second or subsequent conviction of either provision is punishable as a Class H felony.

It is a Class H felony if violation of either of the above provisions (1) results in the creation of an unreasonable risk of harm to a child attending the facility; or (2) results in serious injury to a child attending the facility.

New subsection (f) provides that this bill does not apply to any person who, within 24 hours of notification of an Article 7 violation, complies with all applicable laws and rules and where there is no evidence that a child has been harmed as a result of the violation.

ASSUMPTIONS AND METHODOLOGY:

Data from the Department of Health and Human Services, Division of Child Development, reveal that there were 273 reports of illegal child care operations in 2002. Of those, 84 were found to be operating illegally. Once determined illegal, the caregivers must reduce the number of unrelated children they care for to two children, which is allowed under state law, or become a legal certified child care home through the star-rated licensure program.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five*

[1] AOC Research and Planning Division

year Fiscal Note horizon and beyond. The number of beds needed will always be equal to the projected number of inmates due to a bill.

Since HB 241 subsections (a) and (b)[2] create two new Class I felony offenses, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were ten Class I convictions under this proposed subsection per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days.) In contrast, Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 9 percent of Class I felony offenders were sentenced to active sentences, 36 percent were sentenced to intermediate sanctions, and 55 percent were sentenced to community punishment. On average, offenders served between eight and nine months. Convictions that increase Class 1 and 3 misdemeanors to Class I felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Since subsections (c), (d), and (e) of the bill creates a new Class H felony offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be sentenced for this proposed offense. If, for example, there were three Class H convictions under this proposed subsection per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Class H felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 34 percent of Class H felony offenders were sentenced to active sentences, 50 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between ten and twelve months. The number of second or subsequent convictions of G.S. 110-86(3) or G.S. 110-103 that may result from this bill is unknown. It is also unknown the number of convictions that may result from violations of HB 241 that will result in the creation of an unreasonable risk of harm to a child attending the facility; or will result in serious injury to a child attending the facility.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This

[2] As currently written subsection (b) makes it a Class I felony for a person to operate a child care facility and knowingly and willingly provide child care for more than two children for more than four hours per day on two or more consecutive days. For this analysis, it is assumed that the crime in subsection (b) is to operate in violation of the Article.

increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The AOC has no data regarding the number of charges filed under the existing misdemeanor provisions, or other data from which to estimate the number of charges that could arise from this bill. The term "serious injury" is not defined, and a broad construction could lead to many Class H felony charges. "Serious injury" under current G.S. 14-33 (Class A1 misdemeanor assault) includes serious physical injury as well as damage other than bodily injury, such as economic damage. "Serious bodily injury" is defined in current G.S. 14-32.4 (Class F felony assault) as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, permanent or protracted condition that causes extreme pain, permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is $4,637. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $255. For offenses that are brought to trial as Class H felonies, the estimated court cost per trial is $5,012. For Class H felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $283.

SOURCES OF DATA: Department of Health and Human Services - Division of Child Development, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: The bill date is effective when it becomes law. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The NC Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2004-05. If the bill becomes effective prior to December 1, there will be an impact on prison system in the 2003-04 fiscal year.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser
and
Lisa Hollowell

APPROVED BY: James D. Johnson, Director, Fiscal Research Division

April 21, 2003

SB-877

Examples of Illegal Child Care Providers

A. Cases with Criminal Warrants of Illegal Child Care

1. **Flagrant Violation of Law and Death of Child** *(prompted Kaitlyn's Law)*
In Alamance County, a five-month-old died while in an illegal family child care home. SIDS was listed as the cause of death. Upon investigation it was determined that the provider had administered a generic brand of Benedryl to the child. This provider had been investigated three times before based on reports of illegal child care. There had been a previous SIDS death in this home that was never reported to the county Dept. of Social Services or state Division of Child Development. An arrest warrant was issued. The provider pled guilty and was sentenced to 120 days imprisonment.

2. **Flagrant Violation of Law and Endangerment of Children**
A report was received from county Department of Social Services of a possible illegal facility. A substantiation of neglect was confirmed. Division of Child Development consultants investigated the home and found 12 children ages one to eight-years old in care. Transportation was being provided in a personal vehicle with capacity of seven people. The consultant witnessed 10 preschoolers, two teenagers and the driver climbing into the seven-passenger mini-van and driving away. The consultants talked with the adult in the home describing in detail the applicable laws and child care rules. The provider said that she was aware of the rules because she had been a registered provider before and her certificate was taken away at a different address. She stated that all the children were related to her but failed to provide the documentation of their relationship as requested by the consultants.

3. **Intent to Commit Fraud**
The Child and Adult Food Care Program (CAFCP), a federal meals reimbursement program, received a fraudulent family child care home license with a CAFCP application. The illegal provider reported having a capacity of 25 children on the CAFCP application in order to receive meal expense reimbursement. The Division of Child Development verified that she was caring illegally for 12 children.

4. **Penalty not Great Enough to Merit Court's Attention**
In another case an adult family member in an illegal home threatened the consultants if they came again to investigate. The local police escorted the consultants on the next visit to observe the illegal care. A criminal summons was issued. A court date was set for the provider to appear. The District Court Judge acknowledged the Division of Child Development staff and the illegal provider in the courtroom and indicated that this was a low-level misdemeanor and a waste of his time and dismissed the case.

5. **Provider Continually Violates Law After Repeated Arrests and Convictions**
In another situation, a provider was reported by the county Department of Social Services to be caring for preschool-age children without being licensed. Six to seven preschoolers, ages one to five-year old, were in care. The Division of Child Development consultant advised the provider about the mandate to be licensed. Further investigation by the Division determined that the provider was operating with at least three different names in different locations. None of these facilities were licensed. The provider transported children from house to house during the day to avoid detection. Over a two-year period, three criminal arrest warrants each under different names were served on the provider. At trial, she pled guilty on the charges and received a 30 day suspended sentence plus 18 to 24 months of supervised probation and was ordered to not to

provide child care without complying with the licensing law. Even so, on two occasions since being sentenced, she was found providing care without being licensed.

6. **Provider Neglect and Drug Possession**
The county Department of Social Services contacted the Division of Child Development consultant to report an illegal home provider was reported growing marijuana and selling it from the house, with preschool age children playing in the yard. The provider's nine-year-old child was often left to care for the children while the provider left the house. A neighbor of the provider reported to police that the provider and her husband frequently drove away from the home in a pick up truck with the "six little kids" in the back bed of the truck. The provider's husband was charged with possession and selling of drugs and pled guilty of a lesser charge of simple possession. The provider stopped caring for children after she was charged with neglect of her own children.

7. **Provider Violates Law with Intent and Endangers Children with Medication**
A licensed foster parent was investigated for administering a medication, "Terpin Hydrate Elixer," which has an alcohol content of 41.5%, without the parent's permission. This person was found to be caring for at least five children during the investigation. The administration of the medication to a two-year-old along with leaving children unsupervised was verified. An advertisement was found in the local newspaper for the "licensed center" while an assault charge was pending in County District Court.

8. **Risk of Serious Injury not Reflected in Penalty**
Frequently, illegal providers have been observed transporting too many children for the capacity of the vehicle. In one illegal situation, the consultants investigating found 15 children in a mini van, loaded in the seats, the aisles and cargo space. The provider received a sentence of six to twelve-month unsupervised probation and payment of court costs.

9. **Provider Intentionally Continues to Violate Law**
A county provider's child care home license was terminated by the Division of Child Development for failure to comply with requirements for adequate care. An investigation of domestic violence in the home prompted the social worker to visit. At that time, the provider was caring for children without being licensed. After this was reported to the Division of Child Development, visits on four separate occasions found children were in care in the unlicensed facility. The provider said she knew she was illegal, but that she was not going to stop caring for children. She was issued a criminal summons and two criminal arrest warrants. She was convicted of operating an illegal child care facility and was sentenced to 12 months of unsupervised probation. It was further revealed that she had been convicted of forgery and was on supervised probation at the time of her arrest for operating an illegal child care facility. Her probation has been increased to intensive supervised probation until June 2003. Since her conviction of operating an illegal child care facility, she has once again been observed providing illegal care. The county Department of Social Services continues their domestic violence investigation with ongoing visits.

Examples of Illegal Child Care Providers

10. Provider Operates Illegally After License Terminated

Over the period of a year, reports of five abuse/neglect incidents alleging that children sustained broken bones, bruises, and that a pacifier became lodged in an infant's throat were investigated by county Department of Social Services in the same home. Child abuse was not substantiated because of insufficient evidence that the injuries occurred in facility. The provider was operating an illegal child care arrangement. An arrest warrant was issued and the provider pled guilty at trial. She was given a sentence of 12 months unsupervised probation. This provider had operated a licensed home in the early 1990's. Her license had been terminated because of inadequate care and inappropriate discipline.

11. Provider Operates Illegally After License Terminated; Sexual Abuse Incident

A report alleging that child sexual abuse had occurred in an unlicensed family child care home was received by the Division of Child Development from county Department of Social Services. Upon investigation, it was determined that the provider had failed to properly supervise the five children who were receiving care in the illegal home. A juvenile member of the provider's family took a four-year-old child into a separate room and sexually assaulted the child. The provider was issued a criminal summons. At trial, she pled guilty to a Class 1 misdemeanor. She received a 30day suspended sentence and 18 months of supervised probation. The provider had previously been licensed, but had decided not to renew her license. However, she operated her unlicensed, illegal child care home without detection for approximately 10 years until the sexual abuse incident came to light.

12. Illegal Provider Went Shopping and Left Infant Unsupervised at Home

The county Department of Social Services substantiated child neglect in a case involving a six-month-old who was left alone in a house while the provider was shopping with the other children. The facility was not licensed. Two criminal summons were served on the provider. She pled guilty to a Class 1 misdemeanor and received 12 months of unsupervised probation.

13. Children Sexually Abused; No Charges After Provider Ceased Operation

County Department of Social Services reported a substantiation of child neglect in an illegal day care home. The substantiation was based on inadequate supervision of the children in care resulting in several children being seriously harmed when they were sexually abused by members of the provider's family. At the time of the investigation, the provider was caring for children without being licensed. However, when Division of Child Development visited the home, the provider was no longer operating a family child care home. Unannounced monitoring visits continued to assure that child care was not being provided. Neither an arrest warrant or criminal summons was issued because the provider had ceased operation. The police continued with the investigation of the sexual abuse incident, but the parents of the children were reluctant to prosecute because of the age of their children and length of time since the incidents occurred.

Examples of Illegal Child Care Providers

B. Abuse and Neglect Investigations by County Department of Social Services that Uncovered Illegal Child Care

- A six-month-old infant was left unsupervised in a home while the illegal provider drove away for approximately 15 minutes. The infant's parent arrived at the home to find her child alone in the house and called the police to rescue her child. There were five children in care at the time of the incident.

- A three-month-old infant sustained bruising to the insides of his legs when his legs were pulled through the crib railings by another child. The same infant received an unexplained bump to his head and bruised ear. It was also verified the infant laid in his vomit for an undetermined amount of time, which caused a rash on his face. There were eight children in care by the illegal provider.

- A six-week-old infant was taken from an illegal provider's home to a hospital emergency room. The infant was diagnosed with subdural hemotaosis and was having seizures. Emergency room physicians stated the infant's injuries were not consistent with an accident, and were consistent with Shaken Baby Syndrome. Criminal charges of abuse were filed.

- Four preschool age children were left alone with an illegal provider's husband who was a convicted sex offender, a recovering alcoholic, and drug abuser.

- A nine-year-old stated that he was "smacked" seven or eight times in the face and his hair pulled by an illegal provider. It was reported that on other occasions children were picked up by their arms and spanked with the provider's hand. The illegal provider admitted to slapping the nine-year-old on several occasions. The investigation verified six children in care, ranging in ages from one year to 10 years old.

- A four-year-old was left alone in a park when an illegal provider and five other children left in her car. The victim child was found by an adult who called the police. The provider later returned to the park leaving the other children home alone but couldn't find the child and called the police. The police were caring for the child at the police station while trying to contact a relative.

- An illegal provider's husband sexually abused a nine-year-old child in care. The husband stated to police that the child initiated the sexual contact and that he was intoxicated most days the children were there. The investigation documented many children in care on different days, some of which were grandchildren, but with unrelated children also present. The husband was charged with first degree statutory sex offense and taking indecent liberties with a minor. The provider stated that she napped with the younger children, and her husband had sole responsibility of the school age children. It was also determined by the social worker that an unsafe environment existed for the children. Both adults were in declining health due to high blood pressure, diabetes, severe arthritis, and seizures.

Examples of Illegal Child Care Providers

- A three-year-old child was sexually abused by a household member of an illegal provider. The provider stated that she was not aware of the incidents, however, the perpetrator admitted to the sexual abuse and said that the provider was in the home at the time of the abuse. Criminal charges were dismissed. The perpetrator is awaiting placement in a treatment center.

- A 20-month old received severe bruising to her shoulders and neck while in an illegal home. The provider was in the kitchen preparing lunch and the toddler was left alone with three preschool age children. The investigation revealed that the provider said she heard two "thuds" and the child cry. Returning to the living room she found the toddler upside down on hard toys, stuck between boxes and the wall. The child's mouth was bleeding. Later in the afternoon she left the four children in the care of her fifteen-year-old daughter. The parents picked up the child while the provider was out, with the fifteen-year-old left in charge. They noticed the bruising and took the child to an emergency room. The medical evaluation determined that the injuries were not consistent with the account given by the illegal provider. The police were unable to gather sufficient evidence to file criminal charges and the case was closed.

- An illegal provider was found to be using inappropriate methods of discipline. It was verified by Department of Social Services that the provider placed duct tape on the mouth of a three-year-old, kept preschool age children in high chairs in the corner for at least three hours, and used a paint paddle or a fly swatter to spank children.

- A three-year-old child was sexually abused in the home of an illegal provider. The fourteen-year-old child of the provider was accused of the abuse. The juvenile was often left with the preschool age children while the provider completed household tasks. They often played in the bedroom with the juvenile. The sheriff could not charge the juvenile but the illegal provider was charged with neglect. The parents of the juvenile would not agree to counseling as requested by the sheriff's department.

- Many other counties have reported sexual abuse of children in care of an illegal provider. Cases from Columbus, Craven, Cumberland, Duplin, Durham, Franklin, Granville, Halifax, Johnston, Mecklenburg, Pitt, Rowan, Vance, Wake, and Wilson Counties are listed above.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 877

Short Title:	Illegal Child Care Facilities.	(Public)
Sponsors:	Senator Purcell.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO KNOWINGLY OPERATE A CHILD CARE FACILITY ILLEGALLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

~~Any person who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 1 misdemeanor, except that any person operating a family child care home as defined in G.S. 110-86(3) who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 3 misdemeanor.~~

(a) Any person who operates a child care facility as defined in G.S. 110-86(3) and who provides child care in knowing and willful violation of the provisions of this Article is guilty of a Class I felony.

(b) Any person who operates a child care facility as defined in G.S. 110-86(3) and knowingly and willfully provides child care for more than two children for more than four hours per day on two or more consecutive days is guilty of a Class I felony.

(c) A violation of subsection (a) or (b) of this section that results in the creation of an unreasonable risk of harm to a child attending the child care facility shall be punished as a Class H felony.

(d) A violation of subsection (a) or (b) of this section that results in serious injury to a child attending the child care facility shall be punished as a Class H felony.

(e) Any person who violates this section after being found guilty of a prior violation of subsection (a) or (b) of this section shall be guilty of a Class H felony.

(f) This section shall not apply to any person who, within 24 hours of notification that the person has violated the provisions of this Article, complies with all applicable laws and rules and where there is no evidence that a child has been harmed as a result of the violation."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 776
PROPOSED COMMITTEE SUBSTITUTE S776-PCS55183-RK-38

Short Title: Workers' Comp/Definition of Employee. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an

emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term 'employee' shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

'Employee' shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

'Employee' shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, 'authorized pickup firefighter' means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term 'employee' shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 776:
Workers' Comp/Definition of Employee.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sens. Dalton and Clodfelter
Date:	April 16, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***This act would define an "employee" under the Workers' Compensation Act to exclude persons who deliver newspapers or shopping news directly to the public. The definition would also exclude persons who sell newspapers or magazines to ultimate consumers, and whom are compensated by their retaining an amount in excess of the amount they were charged to obtain the items.***

BILL ANALYSIS:

Section 1:

The act would amend the definition of "employee" in the Workers' Compensation Act to:

- Exclude persons performing services in the delivery or distribution of newspapers or shopping news, unless the delivery or distribution is to any point for subsequent delivery.
- Exclude persons who sell newspapers or magazines to an ultimate consumer at a fixed price, in those situations where the seller's compensation is the amount retained from the fixed price less the amount the seller paid to obtain the items. Persons are excluded as "employees" in this category, regardless of whether there is a guaranteed compensation amount, or they receive a credit for returning unsold items.

Section 2:

The act is effective when it becomes law.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 24, 2003	10:00 a.m.	1027 LB

J-1 COMMITTEE WILL MEET AT 10:00 AM & 10 MINUTES AFTER SESSION IF NECESSARY.

REVISED NOTICE/TIME CHANGE (See above)

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-19	Township ABC Elections	Sen. Albertson
•	SB-52	Clarify Allowance of Court Costs	Sen. Clodfelter
•	SB-160	Delegations of Authority	Sen. Clodfelter
•	SB-531	Antiterrorism/End Residency Affidavits	Sen. Shubert
•	SB-916	Create Civil No-Contact Protective Orders	Sen. Clodfelter
•	SB-919	Homicide Prevention Act/Domestic Violence	Sen. Rand
•	SB-921	Workplace Violence	Sen. Rand
•	SB-992	Protect Master Settlement Money	Sen. Garrou
•	SB-996	ABC-Sexually Explicit Conduct Banned	Sen. Garrou

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 24, 2003 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:11 a.m. with fourteen members present. He introduced Pages, Quinton Porter from Greensboro, NC and Monique Cooper from Garner NC.

SB-19 (Township ABC Elections) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Albertson explained that the bill would permit ABC elections in any township located in a county where cities and townships comprising more than 20% of the population have previously approved the sale of alcoholic beverages. He submitted an amendment to the bill inserting the word "City". See attached amendment. Senator David Hoyle had a question on the bill. Senator Albertson answered the question. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

SB-996 (ABC-Sexually Explicit Conduct Banned) Committee Substitute was introduced by Senator Clodfelter. Senator Linda Garrou moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Garrou asked staff attorney, Hal Pell to explain the bill. Mr. Pell explained that the bill would re-write the statutory prohibitions against sexually explicit conduct on ABC licensees' premises. See attached Bill Summary for further information. Senator Patrick Ballantine had a question. Senator Clodfelter answered the question. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-160 (Delegations of Authority was introduced by Co Chair, Senator R.C. Soles. He stated that a Committee Substitute to this bill was adopted at a previous meeting. Senator Dan Clodfelter, bill sponsor, submitted an amendment and moved for adoption of the amendment. All members voted yes. Motion carried. The bill was displaced, to be heard at a future meeting.

SB-916 (Create Civil No-Contact Protective Orders) Committee Substitute was introduced by Senator Soles. Bill sponsor, Senator Dan Clodfelter moved for adoption of

the Committee Substitute. All members voted yes. Motion carried. The bill was displaced to be combined with SB 921 and will be heard at a later meeting.

SB-992 (Protect Master Settlement Money) was introduced by Senator Clodfelter. Bill sponsor, Senator Linda Garrou said the bill had been discussed previously, and explained that the bill would amend the law that establishes how much money a tobacco product manufacturer who does not participate in the national tobacco Master Settlement Agreement has to place in escrow against possible future damage claims by the states. See attached Bill Summary for further information. Mr. Mack Bailey, S & M Brands Tobacco Association, from Virginia, Mr. Anthony F. Troy, Attorney for S & M Tobacco Association, Mr. Calvin Phelps, Owner of Alternative Brands, Inc., and Ms. Erica Peterson, NC Agri Business Council all spoke on the bill. Senator's Phillip Berger, David Hoyle, Ham Horton and Patrick Ballantine had questions. The questions were answered by Mr. Phelps and Mr. Bailey. Senator Garrou offered comments and said the bill would be held for further study. Senator Clodfelter said the bill would be displaced and heard at a future meeting.

SB-531 (Antiterrorism/End Residency Affidavits) was introduced by Senator Clodfelter. Bill sponsor, Senator Fern Shubert explained that the bill would tighten the identification information required for residency and identification purposes for drivers licenses and voter registration It would prohibit licensure by person not lawfully in the US. See Bill Summary for further details. Ms. Beth Short, NC Teachers, Mr. Peter Gadiel, Representative for Families of America, Mr. John Herrera, National Economic Security and Andrea Manson, Latino Organization all spoke on the bill. Senator Clodfelter said the bill would be displaced to be heard at a late date.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 19
PROPOSED COMMITTEE SUBSTITUTE S19-CSRU-28 [v.2]

4/23/2003 3:46:11 PM

Short Title: Township ABC Elections. (Public)

Sponsors:

Referred to:

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING TOWNSHIP ABC ELECTIONS IN CERTAIN TOWNSHIPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-600(f) reads as rewritten:

"(f) Township Elections. — An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

(3) A county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than 20% of the total county population as of the most recent federal census.

In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B-602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

For purposes of this subsection, the name and boundary of a township is as it is shown on the Redistricting Census 2000 TIGER Files with modifications made by the Legislative Services Office on its computer database as of May 1, 2001.

In any township election held under this subsection, the area within any incorporated municipality is excluded, and no permits may be issued under this subsection in any excluded area."

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages."

SECTION 2. G.S. 18B-604 reads as rewritten:

"**§ 18B-604. Timing and effect of subsequent elections.**

(a) Time Limits. – No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise, alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

(b) Effect of Favorable County Vote on ~~City.~~ City or Township. – If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city or township at that or any previous or subsequent election, and regardless of any local act making sales unlawful in that ~~city,~~ or township, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified [wine] election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city or township within that county shall not affect the legality of those previously authorized sales in the ~~city.~~or township.

(c) Effect of Negative County Vote on ~~City.~~ or Township. – If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city or township in which sale is lawful because of a city or township election or a local act.

(d) Effect of City or Township Election on County. – A city or township alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that ~~city.~~ city or township.

~~(e) ABC Store Required for Mixed Beverages. The sale of mixed beverages may not continue in a city or county at any time after the ABC stores which are requisite to mixed beverage sales have closed.~~

(f) When Sales Stop. – When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election."

SECTION 3. G.S. 18B-404(b) reads as rewritten:

"(b) Issuance. – If mixed beverages sales have been approved for an establishment under G.S. 18B-603(d1) or under G.S. 18B-603(e), or for an establishment located in a township in which mixed beverages have been approved the purchase-transportation permit for that establishment may be issued by the local board of any city located in the same county as the establishment, provided the city has approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located. If there is no ABC store within the establishment's jurisdiction, then the mixed beverages permittee shall obtain a mixed beverages purchase-transportation permit from the nearest and most convenient ABC store."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 19:
Township ABC Elections.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Albertson
Date:	April 23, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S19-CSRU-28		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 19 would permit ABC elections in any township located in a county where cities and townships comprising more than 20% of the population have previously approved the sale of alcoholic beverages.***

CURRENT LAW: G.S. 18B-600(f) provides for township elections in any county where ABC stores have been established by petition pursuant to law, and in any coastal county meeting the specific criteria set out in the statute. In qualified townships, elections may be held on malt beverages, unfortified wine, ABC stores, and mixed beverages. The elections are held by the county board of elections upon request of the county board of commissioners or upon petition of 25% of the registered voters of the township (or in the case of the coastal county, two townships together).

BILL ANALYSIS: ***Section 1*** of the bill amends the law governing township elections to provide that an election may be called in ***any*** township within the State, if the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than 20% of the total county population.

Section 2 makes conforming changes to the law governing the timing and effect of subsequent elections, and repeals an obsolete provision dealing with the sale of mixed beverages in a city or county after the ABC stores in that city or county have closed.

Section 3 makes a conforming change that provides for the purchase and transportation of alcoholic beverages by a permittee located in a township in which mixed beverages have been approved.

EFFECTIVE DATE: The bill would be effective when it becomes law.

This summary was substantially contributed to by Brenda Carter.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 19

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S19-ARU-10 [v.1]

Date 4-24 ,2003

Comm. Sub. [YES]
Amends Title [NO]
S19-CSRU-28

Senator ALBERTSON

moves to amend the bill on page 2, lines 32 and 37,
by inserting after the word "~~city.~~" the word "city"; and

on page 2, line 38, by inserting after the word "~~City.~~" The word "City".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 19

Short Title:	Township ABC Elections.	(Public)
Sponsors:	Senators Albertson; Blake and Rand.	
Referred to:	Judiciary I.	

February 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT CERTAIN TOWNSHIP ABC ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-600(f) reads as rewritten:

"(f) Township Elections. – An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

(3) A county, bordering on a county eligible for township elections pursuant to subdivision (1) of this subsection, where the sales of alcoholic beverages are not authorized countywide and where six municipalities have authorized the sale of alcoholic beverages and where one municipality approved alcoholic beverage control stores but they are currently out of business.

In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B-602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The county board of commissioners in any county authorized to hold township elections pursuant to subdivision (3) of this subsection may establish a different process under which the residents of townships in that county may petition the board to call for the township elections. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 996
PROPOSED COMMITTEE SUBSTITUTE S996-PCS85222-RK-37

Short Title: ABC-Sexually Explicit Conduct Banned. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PREVENT THE NEGATIVE SECONDARY EFFECTS CAUSED BY SEXUALLY EXPLICIT CONDUCT ON PREMISES LICENSED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

Whereas, the United States District Court for the Middle District of North Carolina has issued a preliminary injunction, in the case of Carandola v. Bason, enjoining the State of North Carolina from enforcing regulations which prohibit certain sexually explicit conduct on premises licensed by the Alcoholic Beverage Control Commission, and

Whereas, the federal District Court concluded that the regulations are likely to be held to be unconstitutional, and

Whereas, upon review of the federal District Court decision in Carandola, the United States Circuit Court of Appeals for the Fourth Circuit has found that the federal District Court did not abuse its discretion, and has allowed the injunction to remain in place, and

Whereas, the Circuit Court of Appeals for the Fourth Circuit has stated that entertainment such as nude or topless dancing at bars and clubs has "a long history of spawning deleterious effects," including "prostitution and the criminal abuse and exploitation of young women," and

Whereas, the General Assembly has reviewed studies of the secondary effects of sexually oriented businesses that have been conducted in locations across the United States, including: Phoenix, Arizona; Los Angeles, California; Minneapolis, Minnesota; Austin, Texas; New York City, New York; Oklahoma City, Oklahoma; and other cities, and

Whereas, studies show that negative secondary effects of sexually oriented businesses include increases in crime, such as prostitution, drug offenses, assaults, and sex crimes, and

Whereas, it is not the intent of the General Assembly to suppress the conduct of entertainment at premises licensed by the Alcoholic Beverage Control Commission, but it is the desire of the General Assembly to address the harmful secondary effects of such entertainment, including higher crime rates, public sexual conduct, sexual assault, prostitution, and other secondary negative effects, and

Whereas, it is the intent of the General Assembly to prohibit entertainment at premises licensed by the Alcoholic Beverage Control Commission that provides an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, and the spread of sexually transmitted diseases. Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1005(a) reads as rewritten:

"(a) Certain Conduct. – It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

(1) Any violation of this Chapter;

(2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons; or

(3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts.

~~(4) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;~~

~~(5) Any entertainment that includes or simulates sexual intercourse or any other sexual act; or~~

~~(6) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.~~"

SECTION 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1005.1. Sexually explicit conduct on licensed premises.**

(a) It shall be unlawful for a permittee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

(1) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;

(2) Any conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual act;

(3) Any conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals; or

(4) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.

(b) Supervision. – It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

(c) Exception. – This section does not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, and are engaged in expressing a matter of serious literary, artistic, scientific, or political value."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. This act is effective when it becomes law.

SENATE BILL 996:
ABC-Sexually Explicit Conduct Banned.

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Sen. Garrou
Date:	April 24, 2003	**Summary by:**	H. Alan Pell
Version:	[PCS S996-CSRK-37]		Committee Co-Counsel

SUMMARY: ***This act would re-write the statutory prohibitions against sexually explicit conduct on ABC licensees' premises. The act would include the necessary declaration of intent, and basis for legislative action, in order to meet federal constitutional requirements. An exception is added to narrow the statute's application. The act is effective when it becomes law.***

BACKGROUND:

In *Carandola v. Bason*, a federal case in the Middle District of North Carolina, the plaintiffs have claimed that statutory prohibitions on conduct at their social club violated their First Amendment rights. The judge concluded that there was a likelihood that the plaintiffs would prevail on their claim, and issued a preliminary injunction. The injunction prevents the ABC Commission from enforcing regulations banning sexually explicit conduct. In the opinion, the judge stated that there was insufficient evidence that the legislature had focused on the secondary effects of the conduct, as opposed to the content.

Upon review, the Fourth Circuit Court of Appeals noted that the Commission had failed to present any evidence of harmful secondary effects in North Carolina. The court held that this would not present a problem if the challenged regulations applied only to bars and clubs that present nude or topless dancing. The court found that the regulations were overbroad, i.e., they went far beyond bars and nude dancing establishments. The court concluded that the regulations were applicable to mainstream entertainment events, including popular and award-winning musicals. However, the court did state that the case might well have yielded a different result if the restrictions contained exemptions for

"any theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances" and for persons "engaged in expressing a matter of serious literary, artistic, scientific or political value."

The Fourth Circuit has declined to vacate the injunction; the matter is pending before the district court.

BILL ANALYSIS:

The bill includes language in the preamble that reflects that the legislature's intent to address the negative secondary effects of sexually explicit conduct. Further, the bill provides direct evidence that the legislature has reviewed studies of the secondary effects of sexually oriented businesses.

The prohibitions on sexually explicit conduct are placed in a new section of Chapter 18B. Pursuant to the Fourth Circuit's suggestion, an exception to the statute narrows its application: the statute does not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments where persons are engaged in entertainment with serious literary, artistic, scientific, or political value.

A severability clause provides that any portions of the act found to be invalid, the otherwise valid portions of the act can be given effect.

The act is effective when it becomes law.

S996-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 996

Short Title:	ABC-Sexually Explicit Conduct Banned.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO BAN SEXUALLY EXPLICIT CONDUCT ON PREMISES LICENSED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1005(a) reads as rewritten:

"(a) Certain Conduct. – It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

(1) Any violation of this Chapter;

(2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons; or

(3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts.

~~(4) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;~~

~~(5) Any entertainment that includes or simulates sexual intercourse or any other sexual act; or~~

~~(6) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.~~"

SECTION 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1005.1. Sexually explicit conduct on licensed premises.**

(a) The General Assembly finds and determines that sexually explicit conduct on premises that are licensed to sell alcohol can and does cause adverse secondary effects. Studies that are relevant to North Carolina have found the sale and consumption of alcohol in conjunction with sexually explicit conduct can and do cause adverse secondary effects. Regulation of sexually explicit conduct on premises that are licensed to sell alcohol, in order to prevent or ameliorate adverse secondary impacts, is

consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) Certain Conduct. – It shall be unlawful for a permittee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

(1) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;

(2) Any conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual act;

(3) Any conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals; or

(4) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.

(c) Supervision. – It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

(d) Exception. – Persons engaged in expressing a matter of serious literary, artistic, scientific, or political value shall be excepted from this statute's reach."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 160

Short Title:	Delegations of Authority.	(Public)
Sponsors:	Senators Clodfelter; Dannelly, Gulley, Hartsell, Horton, Kinnaird, Malone, Reeves, and Stevens.	
Referred to:	Judiciary I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO COUNTIES, CITIES, AND BOARDS OF HEALTH AND TO CONFIRM FLEXIBILITY IN THE EXECUTION OF THOSE DELEGATED AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-4 reads as rewritten:

"**§ 160A-4. Broad construction.**

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of city charters~~ It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to cities. Rather, all grants of authority to cities shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers cities shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions."

SECTION 2. G.S. 160A-174 reads as rewritten:

"Article 8.

"Delegation and Exercise of the General Police Power.

"**§ 160A-174. General ordinance-making power.**

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute ~~clearly shows~~expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition."

SECTION 3. G.S. 160A-177 reads as rewritten:

"**§ 160A-177. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. Where there are multiple sources of authority to act, a city may freely elect to use any or all sources, either individually or in combination; provided that when a city makes such an election it shall specify which sources of authority are being employed and shall follow the procedures specified for each of those authorities elected."

SECTION 4. G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

(a) A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated

planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 5. G.S. 153A-4 reads as rewritten:

"**§ 153A-4. Broad construction.**

It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of local acts~~It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to counties. Rather all grants of authority to counties shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to the exercise of the power. Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers counties shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions."

SECTION 6. G.S. 153A-121 reads as rewritten:

"Article 6.

"Delegation and Exercise of the General Police Power.

"**§ 153A-121. General ordinance-making power.**

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health.

(d) A county ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution.

(2) The ordinance makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law.

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law.

(4) The ordinance purports to regulate a subject that counties are expressly forbidden to regulate by State or federal law.

(5) The ordinance purports to regulate a field for which a State or federal statute expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.

(6) The elements of an offense defined by a county ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude county ordinances requiring a higher standard of conduct or condition.

(e) Within the meaning of this section, a 'county ordinance' includes a rule of a local board of health adopted pursuant to G.S. 130A-39."

SECTION 7. G.S. 153A-124 reads as rewritten:

"**§ 153A-124. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor is it a limit on the general authority to adopt ordinances conferred on counties by G.S. 153A-121. Where there are multiple sources of authority to act, a county may freely elect to use any or all sources, either individually or in combination; provided that when a county makes such an election it shall specify which sources of authority are being employed and shall follow the procedures specified for each of those authorities elected."

SECTION 8. G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

(a) A county or its designated planning agency may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

(b) A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical

planning assistance to the other local government or planning agency. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article.

(d) A county may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a county may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 9. G.S. 130A-39 reads as rewritten:

"**§ 130A-39. Powers and duties of a local board of health.**

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c).

(b1) If a local board of health finds that a proposed local rule is required to protect and promote the public health, the fact that the local health rule may also be based in part on nonhealth grounds shall not invalidate the rule as one that exceeds the rule-making authority of the local board of health. Provisions of a local health rule that exceed the rule-making authority of the local board of health may be judicially found to be separable in accordance with a separability clause contained in the rule.

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement

that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", and for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing". Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 10. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

(1)

J-1 Comm. — 4-24-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roy Williams	UNC
Perry Woods	PBA
Mike Olsen	NC State AFL-CIO
[illegible]	[illegible]
Tom Coley	CWA
Bleeson	Capitol Soup
Don Wright	State Bd of Elections
Molly Diggs	NC Sierra Club
Pat Mayo	NCTA
Doug Lassiter	NCSTA
Audrey H. Galloway	Strategic Influences

VISITOR REGISTRATION SHEET

(2)

J-1 Comm. — 4-24-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Estherine Davis	ElectriCities
Andy Romanet	NCLM
Beau Mills	NCMC
D N. HOBART	NCCDC
Ronald D. Sutton	City of Winston-Salem
Joanne Stevens	NCCASA
Monika Johnson Hostler	NCCASA
Darlene Cowan	NCCADV
Beth Froehling	NCCADV
Anne Wilson	[illegible]
Dick Taylor	NCATA

(3)

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

4-24-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Thompson	PPAB
Theresa K	CAA
John Rust	NCFPC
David Lyle	NCAPA
Abagan Manson	EPI
Katie Pomeranz	FHA
John Herrera	NC Coalition for National & Economic Security
J Ludlow	Liggett Group Inc.
Joan Peters	LCDC
RB Pollacco	NC Justice Center
[illegible]	DOJ

(4)

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

4-24-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Wright	ind Lobbyist P.O. Box 2712 Raleigh NC
Larry Bowles	LBA
[signature]	Ward & Smith
Don Carrington	
[signature]	
John McAlister	Duke Energy
Gene Answorth	RJR
[signature]	WCSR
GREGG MARTIN	NCDOR
WILLIAM CLIFTON JARMAN	SELF SUPPORTING BILL 531
Dona McLeod	NC Coalition Against Terrorism
Andrew BARCLAY	NC Coalition Against Terrorism

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 24, 2003	10:00 a.m.	1027 LB

J-1 COMMITTEE WILL MEET AT 10:00 AM & 10 MINUTES AFTER SESSION IF NECESSARY.

REVISED NOTICE/TIME CHANGE (See above)

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-19	Township ABC Elections	Sen. Albertson
•	SB-52	Clarify Allowance of Court Costs	Sen. Clodfelter
•	SB-160	Delegations of Authority	Sen. Clodfelter
•	SB-531	Antiterrorism/End Residency Affidavits	Sen. Shubert
•	SB-916	Create Civil No-Contact Protective Orders	Sen. Clodfelter
•	SB-919	Homicide Prevention Act/Domestic Violence	Sen. Rand
•	SB-921	Workplace Violence	Sen. Rand
•	SB-992	Protect Master Settlement Money	Sen. Garrou
•	SB-996	ABC-Sexually Explicit Conduct Banned	Sen. Garrou

Senator Dan Clodfelter, Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 28, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **577** Adjust Court Jurisdiction.

Draft Number:	PCS 40020
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **919** Homicide Prevention Act/Domestic Violence.

Draft Number:	PCS 55186
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **996** ABC-Sexually Explicit Conduct Banned.

Draft Number:	PCS 85222
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 28, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **577** Adjust Court Jurisdiction.

Draft Number:	PCS 40020
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **919** Homicide Prevention Act/Domestic Violence.

Draft Number:	PCS 55186
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **996** ABC-Sexually Explicit Conduct Banned.

Draft Number:	PCS 85222
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, April 28, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **19** Township ABC Elections .

Draft Number:	PCS 85225
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

JUDICIARY 1 COMMITTEE

April 24, 2003 p.m.

Minutes

Senator Dan Clodfelter called the meeting to order at 1:50 p.m. with nine members present. He introduced Pages, Jesse Scarborough, from Avon, NC and Chris Campbell, from LaGrange, NC.

SB-919 (Homicide Prevention Act/Domestic Violence) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Tony Rand explained that the bill provides that where a court has issued an order to bring about a cessation of acts of domestic violence, the court shall order the defendant to surrender all firearms under the defendant's possession or control, if the court finds any one of several listed factors. See attached Bill Summary for further details. Senator's Phillip Berger, Patrick Ballantine, Charlie Albertson and Dan Clodfelter had questions. Staff attorney, Hal Pell answered the questions. Ms. Ann Winner, Director, NC Association for Women Against Domestic Violence spoke on the bill. Senator Rand submitted an amendment to the bill (Pg.3, line 24) and moved for adoption of the amendment. All members voted yes. Motion carried. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 2:00 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 919
PROPOSED COMMITTEE SUBSTITUTE S919-PCS55186-RK-43

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Court Discretion. – If the court does not find any of the factors in subsection (a) of this section, the court, in its discretion, may order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. For purposes of this section, the term 'firearm' is as defined in G.S. 14-409.39(2).

(c) Ex parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying

information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(e) Surrender. – Upon service of the orders, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms shall also include the notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(f) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court determines that the defendant should not be allowed to retrieve the weapons.

(g) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order and not later than 90 days after the expiration of the current order. Upon receipt of the motion, the court shall schedule a hearing and provide written

notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed;

(2) Whether the defendant is subject to any other protective orders; or

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal laws.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with sale, and in accordance with all applicable State and Federal law, shall be provided to the defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court,

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court, or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only."

SECTION 2. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase of firearms by person subject to domestic violence order prohibited.**

(a) ~~It~~ In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 919:
Homicide Prevention Act/Domestic Violence.

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Sen. Rand
Date:	April 24, 2003	**Summary by:**	H. Alan Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***This act provides that where a court has issued an order to bring about a cessation of acts of domestic violence, the court shall order the defendant to surrender all firearms under the defendant's possession or control, if the court finds any one of several listed factors. The court has discretion to order surrender if none of the factors is found.***

CURRENT LAW: A court has the authority to prohibit a party from purchasing a firearm for a time fixed in the domestic violence order. G.S. 50B-3(a)(11).

BILL ANALYSIS:

- Upon the issuance of a domestic violence restraining order, the court is required to order the defendant to surrender to the sheriff all firearms, permits to purchase firearms, and permits to carry concealed firearms that are in the defendant's care, custody, possession, ownership or control, if the court finds any of the following factors:
  - (1) The use or threatened use of a deadly weapon by the defendant.
  - (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
  - (3) Threats to commit suicide by the defendant.
  - (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.
- If the court fails to find any of the factors, it may issue the surrender order in its discretion.
- The court is required to question the defendant as to the defendant's ownership or access to firearms, permits, and ammunition, as well as the identifying information of the same.
- The defendant is required to surrender to the sheriff all items listed in the order. The sheriff may charge a reasonable fee and is not liable for any damage due to storage or deterioraton. The terms of the order must include a notice of the penalty for a violation.
- By motion, the defendant may request the return of the items at the expiration of the order. The court is required to determine whether any State or federal law would preclude the return of the items. If a motion for return is not filed, or if the defendant is precluded by law from re-obtaining the items, or fails to remit fees to the sheriff for storage, then an order for disposition may be sought.
- It is a Class H felony to (1) violate the court order, (2) fail to surrender the firearms, ammunition or permits, or (3) provide false information to the court.

The act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 919

COMMITTEE SUBSTITUTE _____

DATE April 24, 2003

Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) Rand
Sen.)

moves to amend the bill on page 3, line 24

( ) WHICH CHANGES THE TITLE

by adding the following after the word "14-269.1.":

"If a sale by the sheriff does occur, any proceeds from the sale, after deducting any costs associated with sale, and in accordance with all applicable State and federal law shall be ~~paid~~ provided to the defendant."

SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 919

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

If the court does not find any of these factors, the court, in its discretion, may order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. For purposes of this section, the term 'firearm' is as defined in G.S. 14-409.39(2).

The court shall inquire of the plaintiff the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, at the ex parte or emergency hearing and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

The court shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, at the 10 day hearing and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

Upon service of the orders, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court determines that the defendant should not be allowed to retrieve the weapons.

If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms shall also include the notice of the penalty for violation of G.S. 14-269.8.

The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only.

The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits.

The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order and not later than 90 days after the expiration of the current order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any state or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include: (i) whether the protective order has been renewed; (ii) whether the defendant is subject to any other protective orders; or (iii) whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law. The court shall deny the return of

firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal laws.

The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(b) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and the defendant shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by subsection (4), (4a), (5), or (6) of G.S. 14-269.1.

(c) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect.

It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court, fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court, or provide false information to the court pertaining to any of these items.

Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(d) Official Use Exemption. – This section shall not prohibit law enforcement and military employees from possessing or using firearms for official use only."

SECTION 2. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase of firearms by person subject to domestic violence order prohibited.**

(a) ~~It~~ In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any

successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
RON WOODARD	NC COALITION AGAINST TERRORISM
Beth Thomas	NC Coalition Against Terrorism
PETER GADIEL	9/11 FAMILIES FOR A SECURE AMERICA
JIM STAUDENRAUS	F.A.I.R. 1666 CONNECTICUT AVE NW SUITE 400 WASHINGTON DC 20009
Ben Easley	NC Coalition Against Terrorism
Nancy Thompson	MCIC
THOMAS M. MOSS	NC DOMESTIC VIOLENCE COMM.
Kathy Hodges	Family Violence & Rape Crisis Svs, Pittsboro, NC
[illegible]	DOA
[illegible]	DOA
[illegible]	Capitol Police
[illegible]	Capitol Police
[illegible]	Council For Women
[illegible]	NCRA
[illegible]	DOT - DMV
Jamie Howard	DOT/DMV
Fred Allen	NC Aggregates Assn.
[illegible]	Martin Marietta Materials
Dallas Baker	Intern - Sen. Gulley
Calvin Phelps	Alternative Brands
Lisa Yamaoka	Alternative Brands
Michelle Old	UNC

(6

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
MAC BAILEY	S&M BRANDS 3662 Keysville, VA 23947
Everett Ott	S&M Brands " " "
Jerry Kinnett	NC. Pork Co.
Kevin Altman	Cigtel Tobacco Richmond, VA 23060
[illegible]	[illegible]

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 29, 2003	10:00 a.m.	1027 LB

REVISED NOTICE/SB-669 ADDED

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	SB-52	Clarify Allowance Of Court Costs	Sen. Clodfelter
•	SB-160	Delegations Of Authority	Sen. Clodfelter
•	Sb-669	Civil Remedy For Animal Cruelty	Sen. Hartsell
•	SB-916	Create Civil No-Contact Protective Orders	Sen. Clodfelter
•	SB-921	Workplace Violence	Sen. Rand
•	SB-972	Moratorium On Executions For Two Years	Sen. Kinnaird
•	SB-992	Protect Master Settlement Money	Sen. Garrou

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

April 29, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 10:04 a.m. with sixteen members present. He introduced Pages, Cheri Hodges from Raleigh, NC and Derek Hodge from Wendell, NC.

SB-669 (Civil Remedy For Animal Cruelty) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Fletcher Hartsell explained the bill. Senator's Ham Horton and R.C. Soles had questions. Senator Hartsell answered the questions. Senator Soles moved for a Favorable Report. All members voted yes. Motion carried.

SB-916 (Create Civil No-Contact Protective Orders) Committee Substitute and SB-921 (Workplace Violence) was introduced by Senator R. C. Soles, Co Chair. Bill sponsor of SB-916, Senator Dan Clodfelter moved for adoption of the Committee Substitute. All members voted yes. Motion carried. He explained that the bill would allow the courts to issue protective orders, similar domestic violence orders under Chapter 50B, in situations where a person has been a victim of bodily injury, threat of physical bodily harm, stalking, or nonconsensual sexual conduct. See attached Bill Summary for further information. He asked staff attorney, Walker Reagan to explain the combination of SB-921 and SB-916. Senator Clodfelter moved for a Favorable Report. All members voted yes. Motion carried.

SB-972 (Moratorium On Executions For Two Years) Committee Substitute was introduced by Senator Clodfelter. Senator R.C. Soles moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Ellie Kinnaird explained that the bill would delay executions on or after June 1, 2005. A study would be authorized to examine issues relating to the death penalty. See attached Bill Summary for further details. Mr. Jim Coleman, Duke University Law School, spoke on the bill. Mr. Tom Fuel, spoke on the death of his eight =year old daughter who was a murder victim, and the workings of the criminal justice system. Ms. Julia White, Department of Justice spoke in opposition of the bill. Mr. Rob Johnson, District Attorney in Alamance County, representing the DA's of NC, spoke in opposition of the bill. Senator's Cecil Hargett, Jeanne Lucas, Vernon Malone, Ham Horton and Patrick Ballantine had questions on the bill. Senator Kinnaird and staff attorney, Hal Pell answered the questions. Senator Ballantine offered an amendment to the bill and moved

for adoption. Senator Clodfelter called for a vote. Amendment was defeated. Senator Lucas moved for a Favorable Report. Majority of members voted yes. Motion carried.

SB-160 (Delegations Of Authority) Committee Substitute was introduced by Senator R. C. Soles, Co Chair. Senator Dan Clodfelter, bill sponsor, moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Mr. Keith Holliday, Mayor of Greensboro, NC spoke on the bill. Mr. Mack Baxley from the audience spoke in opposition of the bill. Senator Clodfelter submitted an Amendment to the bill, and moved for adoption of the amendment. All members voted yes. Motion carried. See attached Amendment. Senator Clodfelter moved for a Favorable Report. All members voted yes. Motion carried. The bill was referred to Finance Committee.

SB-52 (Clarify Allowance Of Court Costs) Committee Substitute was introduced by Senator Soles. Senator Patrick Ballantine moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Dan Clodfelter explained that the bill clarifies that the trial court's discretion to award certain costs in civil cases is limited to those litigation expenses the General Assembly has specified as being assessable or recoverable costs. See attached Bill Summary for further information. Senator Clodfelter moved for a Favorable Report. All members voted yes. Motion carried.

SB-992 (Protect Master Settlement Money) was introduced by Senator Clodfelter. Bill sponsor, Senator Linda Garrou explained the bill. Mr. J.B. Kelly from the NC Attorney General's Office spoke on the bill. Senator's David Hoyle, Tony Rand, Phillip Berger and Wib Gulley had questions. Mr. Kelly and Senator Garrou answered the questions. Senator Gulley moved for a Favorable Report. Senator Cecil Hargett seconded the motion. All members voted yes. Motion carried.

SB-974 (Amend Public Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Clark Jenkins moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Jenkins explained the bill. No discussion. Senator R.C. Soles moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Daniel Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, April 29, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **669** Civil Remedy for Animal Cruelty.

Draft Number:	PCS 55187
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **916** Create Civil No-Contact Protective Orders.

Draft Number:	PCS 85228
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **972** Moratorium on Executions for Two Years.

Draft Number:	PCS 40032
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, April 29, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **160** Delegations of Authority.

Draft Number:	PCS 40034
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, April 29, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **52** Clarify Allowance of Court Costs.

Draft Number:	PCS 40033
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **974** Amend Public Laws.

Draft Number:	PCS 35265
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, April 29, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **992** Protect Master Settlement Money.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 669
PROPOSED COMMITTEE SUBSTITUTE S669-PCS55187-RK-45

Short Title: Civil Remedy for Animal Cruelty. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE CIVIL REMEDY FOR PROTECTION OF ANIMALS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 19A of the General Statutes reads as rewritten:

"Article 1.

"Civil Remedy for Protection of Animals.

"§ 19A-1. Definitions.

The following definitions apply in this Article:

(1) The ~~terms~~ term 'animals' ~~and 'dumb animals' include every useful living creature.~~ includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.

(2) The terms 'cruelty' and 'cruel treatment' include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or ~~permitted; but these terms shall not be construed to include lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry.~~ permitted.

(3) The term 'person' has the same meaning as in G.S. 12-3.~~includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals.~~

"§ 19A-1.1. Exemptions.

This Article shall not apply to the following:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds exempted by the Wildlife Resources Commission from its definition of 'wild birds' pursuant to G.S. 113-129(15a).
(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.
(3) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.
(4) Activities conducted for lawful veterinary purposes.
(5) The lawful destruction of any animal for the purposes of protecting the public, other animals, or the public health.
(6) Lawful activities for sport.

"§ 19A-2. Purpose.

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any ~~'person' as hereinbefore defined even though such~~ person even though the person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal.

"§ 19A-3. Preliminary injunction.

Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, ~~in his discretion,~~ as a matter of discretion, issue a preliminary injunction in accordance with the procedures set forth in G.S. 1A-1, Rule 65. Every such preliminary injunction, if the complainant so requests, may give the complainant the right to provide suitable care for the animal. If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the complainant to take possession of the animal.

"§ 19A-4. Permanent injunction.

In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as ~~he~~ the court deems appropriate, including a permanent injunction ~~or final determination of the animal's custody.~~ and dismissal of the action along with dissolution of any preliminary injunction that had been issued. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner.

§§ 19A-5 through 19A-9: Reserved for future codification purposes."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 669:
Civil Remedy for Animal Cruelty.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Hartsell
Date:	April 29, 2003	**Summary by:**	H. Alan Pell
Version:	PCS [S669-CSRK-45 [v.2]		Committee Co-Counsel

SUMMARY: ***This act would amend the Article that provides the procedure for bringing an action to prevent cruelty to animals. The act is effective when it becomes law.***

BILL ANALYSIS:

The act redefines "animals" and "person" in the statute. The exemptions are placed in a new section. A new provision is added to allow a court to terminate ownership if substantial risk of cruelty might exist under a preliminary injunction.

Section 2. The act is effective when it becomes law.

BACKGROUND: This act is a recommendation by the General Statutes Commission.

S669-smrk-02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 669

Short Title:	Civil Remedy for Animal Cruelty.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE CIVIL REMEDY FOR PROTECTION OF ANIMALS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 19A of the General Statutes reads as rewritten:

"Article 1.

"Civil Remedy for Protection of Animals.

"**§ 19A-1. Definitions.**

The following definitions apply in this Article:

(1) The ~~terms~~ term "animals" ~~and "dumb animals" include every useful living creature.~~includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.

(2) The terms "cruelty" and "cruel treatment" include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or ~~permitted; but these terms shall not be construed to include lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry.~~ permitted.

~~(3) The term "person" includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals.~~

"**§ 19A-1.1. Prohibition.**

No person shall engage in cruelty to or cruel treatment of any animal.

"**§ 19A-1.2. Exemptions.**

This Article shall not apply to the following activities conducted in compliance with commonly accepted practices:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(3) Activities conducted for the primary purposes of providing food for human or animal consumption.

(4) Activities conducted for veterinary purposes by or under the supervision of licensed veterinarians.

(5) The lawful destruction of any animal for the purposes of protecting the public, other animals, or the public health.

(6) Lawful activities for sport.

"§ 19A-2. Purpose.

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any ~~"person" as hereinbefore defined even though such~~ person even though the person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal.

"§ 19A-3. ~~Preliminary injunction.~~ Temporary restraining order.

Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, in ~~his~~ the judge's discretion, issue a ~~preliminary injunction~~ temporary restraining order in accordance with the procedures set forth in G.S. 1A-1, Rule 65. Every such ~~preliminary injunction,~~ temporary restraining order, if the ~~complainant~~ plaintiff so requests, may give the ~~complainant~~ plaintiff the right to provide suitable care for the animal. ~~If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the complainant to take possession of the animal.~~

"§ 19A-3.1. Preliminary injunction.

If the court finds, after a hearing pursuant to G.S. 1A-1, Rule 65, that the cruelty or cruel treatment alleged would not immediately be terminated by issuance of a preliminary injunction that leaves the animal in possession of the defendant, the court may issue a preliminary injunction transferring possession and custody of the animal to the plaintiff or to a third party.

"§ 19A-4. Permanent injunction.

In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a

jury, and upon hearing such evidence as may be presented, shall enter orders as ~~he~~ the court deems appropriate, including a permanent injunction ~~or final determination of the animal's custody.~~ and dismissal of the action along with dissolution of any temporary injunction that had been issued. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 916*
PROPOSED COMMITTEE SUBSTITUTE S916-PCS85228-RU-14

Short Title: Prevent Personal and Workplace Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50C.**

"**Civil No-Contact Orders.**

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – A temporary or permanent order granted under this Chapter, which includes a remedy authorized by G.S. 50C-9.

(3) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

(4) Nonconsensual. – A lack of freely given consent.

(5) Sexual conduct. – Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(6) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(7) Stalking. – Following on more than one occasion or otherwise harassing, as defined in G.S. 14-277.3(c), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(7) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon a person but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

c. Stalking.

d. Willfully threatening, orally, in writing, or by any other means, to physically injure the victim in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the victim to believe that the threat will be carried out.

(8) Victim. – A person against whom an act of unlawful conduct has been committed.

"**§ 50C-3. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil district court by any of the following:

(1) A person who is a victim of unlawful conduct.

(2) A person on behalf of a minor child or an incompetent adult, who is a victim of unlawful conduct who cannot file the petition on his or her own behalf.

(3) An employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Chapter in order to

determine whether any safety concerns exist in relation to their participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Chapter shall not face disciplinary action based on their level of participation or cooperation.

"**§ 50C-4. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil district court.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-5. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified, or accompanied by an affidavit, and shall allege either of the following:

(1) That the petitioner or the person on whose behalf the petition is brought is or has been the victim of unlawful conduct by the respondent.

(2) That the employee has suffered unlawful conduct from the respondent that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-6. Venue.**

A petition for a civil no-contact order may be filed in any of the following counties:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the unlawful conduct took place.

(4) Where the place of employment is located.

"**§ 50C-7. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within 10 days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-8. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the victim is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the victim with the respondent when this evidence is offered by the respondent regarding the issue of whether the victim consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the victim and the respondent. Unless the court finds that reasonably specific information as to date, time, or place or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the victim and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the victim may be examined or cross-examined.

"**§ 50C-9. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner has proven that the petitioner, the person on whose behalf the petition was brought, or employee is a victim of unlawful conduct a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-10 for emergency orders or G.S. 50C-11 for permanent orders. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim.

(b) The court may include any one or more of the following orders in its temporary or permanent orders under this Chapter:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim, the employer or the employer's operations, or the employer's employee at the employer's workplace.
(2) Order the respondent to cease stalking the victim, including at the victim's workplace.
(3) Order the respondent to cease harassment of the victim or employer.
(4) Order the respondent not to abuse or injure the victim or the employer, including the employer's property.
(5) Order the respondent not to telephone the victim or the employer.
(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present, if reasonable.
(7) Order other relief deemed necessary and appropriate by the court.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:
(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.
(2) The respondent was voluntarily intoxicated.
(3) The victim acted or failed to act in self-defense or defense of another.
(4) The victim left or failed to leave the residence or household to avoid further unlawful conduct by the respondent.

(d) Monetary damages are not recoverable as a remedy under this Chapter.

"**§ 50C-10. Temporary civil no-contact order; court holidays and evenings.**

(a) A court may issue a temporary civil no-contact order if the petitioner satisfies the following requirements:
(1) The petitioner has met the requirements of G.S. 50C-9.
(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-11 have been met, the court may issue a permanent order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day temporary order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner or victim and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by

facsimile, or otherwise an emergency civil no-contact order at all times, whether or not the court is in session.

"**§ 50C-11. Permanent civil no-contact order.**

A permanent civil no-contact order shall issue if the petitioner has served notice of the hearing for the permanent civil no-contact order on the respondent in accordance with G.S. 50C-7 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-9.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-7.

(3) The respondent has answered or is in default.

"**§ 50C-12. Duration; extension of orders.**

(a) Unless reopened, extended, or voided by entry of an order of greater duration, a temporary civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a permanent civil no-contact order shall be effective for a fixed period of time, not to exceed one year. A permanent civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 50C-10 or G.S. 50C-11, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the petitioner filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 50C-10(c).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**§ 50C-13. Contents of orders.**

(a) A civil no-contact order shall state the following:

(1) The name of each person that the court finds was the victim of unlawful conduct by the respondent and the name of any other person

protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is a temporary or permanent order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in a temporary civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(b) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**§ 50C-14. Notice of orders.**

(a) The clerk of court shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent.

(b) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

"**§ 50C-15. Violation.**

A knowing violation of a civil no-contact order shall be punished as contempt of court.

"**§ 50C-16. Enforcement of orders.**

(a) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(b) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(c) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-17. Limits on liability of employers.**

(a) An employer and an employer's agents who act in accordance with this Chapter shall be presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, are immune from civil liability for actions taken under this Chapter.

(b) Any employer, or its employee or invitee, that does not utilize the procedures of this Chapter shall not be liable for negligence, and evidence of the failure to utilize the procedures of this Chapter shall not be admissible as evidence of negligence.

"**§ 50C-18. Scope of Chapter; other remedies available.**

This Chapter does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Chapter does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Chapter does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Chapter is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

SENATE BILL 916:
Prevent Personal and Workplace Violence.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 24, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S916-CSRU-14		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 916 would allow the courts to issue protective orders, similar domestic violence orders under Chapter 50B, in situations where a person has been a victim of bodily injury, threat of physical bodily harm, stalking, or nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as a crime. An employer of a victim may also seek protective orders to prevent potential violence in the workplace.***

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: Senate Bill 916 creates a new Chapter 50C entitled "Civil No-Contact Orders". The bill establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where unlawful conduct (as defined in the bill) has occurred.

G.S. 50C-2 sets out definitions used in the Article. This includes the definition of "Unlawful conduct" to include causing or attempting to cause bodily injury, nonconsensual sexual conduct (defined), stalking (defined), and threatening physical injury to the victim. "Stalking" is defined the same as the crime of stalking but could be proven by the greater weight of the evidence. "Nonconsensual sexual conduct" includes sexual fondling or sexual penetration where consent is not freely given.

G.S. 50C-3 permits a petition for a civil no-contact order to be filed by a victim of unlawful conduct, a person who acts behalf of another person who is such a victim, or the employer of an employee who is a victim of unlawful conduct.

G.S. 50C-4 sets out the procedures for initiating an action. Actions are started by the filing of a petition, with no filing fee or sheriff's service fee.

G.S. 50C-5 requires that the petition be accompanied by an affidavit alleging that the petitioner has been a victim of unlawful conduct, or that the employee of the employer has been a victim of unlawful conduct.

G.S. 50C-6 allows actions to be brought where either the petitioner or the respondent reside, where the unlawful conduct occurred, or where the place of employment is located.

G.S. 50C-7 sets out the service of process that applies in these proceedings, including provisions for expedited service.

G.S. 50C-8 restricts the admissibility of the victim's prior sexual activities and only allows testimony of the victim's past sexual conduct to be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-9 requires the court to issue a no-contact order where it is found that the petitioner or employee is a victim of unlawful conduct. The order may require the respondent to not visit, assault, molest or otherwise interfere with the victim or the employer, order the respondent to cease stalking, harassing, abusing, injuring, and telephoning the victim. The court may also order the respondent to stay away from the victim including prohibitions against entering the victim's residence, school, place of employment or other specified places at times when the petitioner is present. Denial of a remedy shall not be based on the fact that the respondent was justified in using force or was intoxicated, and not based on the victim acting or failing to act in self-defense, or leaving or failing to leave a residence or household. Monetary damages are not allowed to be recovered under this law.

G.S. 50C-10 sets out a procedure for the issuance of temporary orders.

G.S. 50C-11 sets out a procedure for the issuance of permanent orders.

G.S. 50C-12 limits temporary orders to a minimum of 14 days and a maximum of 21 days. Permanent orders may last for a period of up to one year and may be renewed.

G.S. 50C-13 sets out the requirement for the contents of the order, including notice that violation of the order is punishable as contempt of court.

G.S. 50C-14 sets out a process of filing notices of the orders with law enforcement and service of orders on the respondent.

G.S. 50C-15 makes a violation of a no-contact order punishable by contempt of court.

G.S. 50C-16 authorizes orders to be enforced by any law enforcement officer in the State. It also allows an officer to arrest without a warrant for a violation of an order.

G.S. 50C-17 provides immunity for employers who act in good faith under this law, and does not create liability for negligence by failing to act as permitted by the law.

G.S. 50C-18 makes it clear that the law does not otherwise diminish the employer's obligations to the employee nor does it limit any other remedy the employer or employee might otherwise have under law. It also does not apply to situations governed by the National Labor Relations Act.

EFFECTIVE DATE: The bill would become effective December 1, 2003 and would apply to actions that give rise to civil no-contract orders issued under the act, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 916*

Short Title:	Create Civil No-Contact Protective Orders.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 50C.

"Civil No-Contact Orders.

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Purpose.**

Sexual assault is one of the most heinous crimes a person can commit against another. Sexual assault inflicts humiliation, degradation, and terror on its victims. According to the Federal Bureau of Investigation (FBI), a woman is raped every six minutes in the United States. Rape is recognized as the most under-reported crime. Estimates suggest that only one in seven rapes is reported to authorities and in many instances where a rape is reported, the crime is never prosecuted. Victims who choose not to report the crime still desire safety and protection from future interactions with the offender, and it is the purpose of this Chapter that in these situations, the victim should be able to seek a simple civil remedy requiring that the offender be prohibited from having any contact with the victim.

"**§ 50C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – An emergency or plenary order granted under this Chapter, which includes a remedy authorized by G.S. 50C-13.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching or fondling by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

"**§ 50C-4. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil court by any of the following:

(1) A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration.

(2) A person on behalf of a minor child or an adult who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, but because of age, disability, health, or inaccessibility, cannot file the petition.

"**§ 50C-5. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil court, unless specific courts are designated by local rule or order.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-6. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified or accompanied by an affidavit and shall allege that the petitioner is or has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-7. Application of rules of civil procedure; rape crisis advocates.**

(a) Any proceeding to obtain, modify, re-open, or appeal a civil-no contact order shall be governed by the Rules of Civil Procedure, Chapter 1A of the General Statutes. The standard of proof in a civil no-contact order proceeding is proof by a preponderance of the evidence.

(b) In a civil no-contact order proceeding, rape crisis advocates shall be allowed to accompany and confer with the victim, unless otherwise directed by the court. Court administrators shall allow rape crisis advocates to assist victims of nonconsensual sexual conduct or nonconsensual sexual penetration in the preparation of petitions for civil no-contact orders. Rape crisis advocates are not engaged in the unauthorized practice of law when providing assistance pursuant to this subsection.

"**§ 50C-8. Venue.**

A petition for a civil no-contact order may be filed in any of the following:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the alleged nonconsensual sexual conduct or nonconsensual sexual penetration occurred.

"**§ 50C-9. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within seven days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a plenary civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with subsection (a) of this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-10. Hearings.**

A petition for a civil no-contact order shall be treated as an expedited proceeding, and no court may transfer or otherwise decline to decide all or part of the petition. Nothing in this section shall prevent the court from reserving issues if jurisdiction or notice requirements are not met.

"**§ 50C-11. Continuance.**

(a) Petitions for emergency remedies shall be granted or denied in accordance with the standards of G.S. 50C-14, regardless of the respondent's appearance or presence in court.

(b) Any action for a civil no-contact order is an expedited proceeding. Continuances shall be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance.

"**§ 50C-12. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the petitioner is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent regarding the issue of whether the petitioner consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the petitioner and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the petitioner may be examined or cross-examined.

"**§ 50C-13. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-14 for emergency orders or G.S. 50C-15 for plenary orders. The petitioner shall not be denied a civil no-contact order because the petitioner or the respondent is a minor. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim. Modification or extension of prior civil no-contact orders shall be in accordance with this Chapter.

(b) A civil no-contact order shall order the respondent to stay away from the petitioner or any other person protected by the civil no-contact order, or prohibit the respondent from entering or remaining present at the petitioner's school, place of employment, or other specified places at times when the petitioner is present, or both, if reasonable. Hardships or inconvenience to the respondent need not be balanced for the

court to enter a civil no-contact order or prohibit the respondent from entering premises where the respondent has no right of entry.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.

(2) The respondent was voluntarily intoxicated.

(3) The petitioner acted in self-defense or defense of another.

(4) The petitioner did not act in self-defense or defense of another.

(5) The petitioner left the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(6) The petitioner did not leave the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(d) Monetary damages are not recoverable as a remedy.

"**§ 50C-14. Emergency civil no-contact order; court holidays and evenings.**

(a) A court may issue an emergency civil no-contact order if the petitioner satisfies the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for an emergency order, the respondent may elect to file a general appearance and testify. Any resulting order may be an emergency order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-15 have been met, the court may issue a plenary order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day emergency order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue an emergency civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by facsimile, or otherwise, an emergency civil no-contact order at all times, whether or not the court is in session.

(e) Any order issued under this section and any documentation in support of the order shall be certified on the next court day to the appropriate court. The clerk of that court shall immediately assign a case number and file the petition, order, and any other documents with the court, enter the order of record, and file it with the sheriff for service in accordance with G.S. 50C-9. Filing the petition shall commence proceedings

for further relief under G.S. 50C-5. Failure to comply with the requirements of this subsection does not affect the validity of the order.

"**§ 50C-15. Plenary civil no-contact order.**

A plenary civil no-contact order shall issue if the petitioner has served notice of the hearing for the plenary civil no-contact order on the respondent in accordance with G.S. 50C-9 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-9.

(3) The respondent has answered or is in default.

"**§ 50C-16. Duration; extension of orders.**

(a) Unless reopened or extended or voided by entry of an order of greater duration, an emergency civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a plenary civil no-contact order shall be effective for a fixed period of time, not to exceed two years. A plenary civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding two years.

(c) Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of G.S. 50C-14 or G.S. 50C-15, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of subsection (c) of G.S. 50C-14, which applies only when the court is unavailable at the close of business or on a court holiday.

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

(e) Nothing in this Chapter shall be construed to encourage the practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a civil no-contact order.

"**§ 50C-17. Contents of orders.**

(a) All civil no-contact orders shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(b) A civil no-contact order shall further state the following:

(1) The name of each petitioner that the court finds was the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is an emergency or plenary order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in an emergency civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order is a Class A1 misdemeanor. Any second or subsequent violation is a Class H felony'.

"**§ 50C-18. Notice of orders.**

(a) Upon issuance of any civil no-contact order, the clerk of the court issuing the order shall immediately, or on the next court day if an emergency order is issued in accordance with subsection (c) of G.S. 50C-14, do the following:

(1) Enter the order on the record and file it in accordance with the district court procedures.

(2) Provide a file stamped copy of the order to the respondent, if present, and to the petitioner.

(b) The clerk of the issuing judge shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent. If the order was issued in accordance with subsection (c) of G.S. 50C-14, the clerk shall, on the next court day, file a certified copy of the order with the sheriff or other law enforcement personnel charged with maintaining criminal records.

(c) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order or short form notification.

(d) If the person against whom the civil no-contact order is issued is arrested and the written order is issued in accordance with subsection (c) of G.S. 50C-14 and received by the custodial law enforcement agency before the respondent or offender is released from custody, the custodial law enforcement agent shall promptly serve the order upon the respondent or offender before the respondent or offender is released from custody. In no event shall detention of the respondent or offender be extended for

hearing on the petition for civil no-contact order or receipt of the order issued under G.S. 50C-14.

(e) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

(f) Upon the request of the petitioner, within 24 hours of the issuance of a civil no-contact order, the clerk of the issuing judge shall send written notice of the order along with a certified copy of the order to any school, college, or university at which the petitioner is enrolled.

"**§ 50C-19. Violation.**

A knowing violation of a civil no-contact order is a Class A1 misdemeanor. A second or subsequent violation is a Class H felony.

"**§ 50C-20. Arrest without warrant.**

(a) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(b) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-21. Data maintenance by law enforcement agencies.**

(a) All local sheriff's departments shall furnish to the local police departments, on the same day as received, in the form and detail the police department requires, copies of any recorded emergency or plenary civil no-contact orders issued by the court and transmitted to the sheriff by the clerk of the court in accordance with subsection (b) of G.S. 50C-18. Each civil no-contact order shall be entered in the police department's data system on the same day it is issued by the court. If an emergency civil no-contact order was issued in accordance with subsection (c) of G.S. 50C-14, the order shall be entered in the police department's data system as soon as possible after receipt from the clerk of the court.

(b) Each local police department shall maintain a complete and systematic record and index of all valid and recorded civil no-contact orders issued under this Chapter. The recorded civil no-contact orders issued under this Chapter shall be used to inform all dispatchers and law enforcement personnel at the scene of an alleged incident of nonconsensual sexual conduct or nonconsensual sexual penetration of any violation of a civil no-contact order, any recorded prior incident of nonconsensual sexual conduct or nonconsensual sexual penetration involving the victim, and the effective dates and terms of any recorded civil no-contact order."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under Chapter 50C of the General Statutes, as enacted in Section 1 of this act, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 921

Short Title:	Workplace Violence.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CONTRIBUTE TO THE PREVENTION OF WORKPLACE VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 23.

"Workplace Violence Prevention.

"**§ 95-260. Definitions.**

The following definitions apply in this Article:

(1) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.

c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

(2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

"**§ 95-261. Institution of civil action; temporary restraining orders.**

(a) Any employer whose employee has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace may seek an injunction under this Article on behalf of the employee by filing a petition alleging unlawful conduct against the employee. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this section in order to determine whether any safety concerns exist in relation to their participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this section shall not face disciplinary action based on their level of participation or cooperation.

(b) Upon filing a petition with the court for an injunction, the petitioner may move the court for a temporary restraining order if the petitioner also files an affidavit that shows, to the satisfaction of the court, reasonable proof that an employee has suffered unlawful conduct by the respondent and that great or irreparable harm will result to the employee if the temporary restraining order is not granted. The affidavit shall further show that the petitioner has conducted a reasonable investigation into the underlying facts that are the subject of the petition. If it clearly appears to the court that there is a danger of further unlawful conduct against the employee, the court may enter ex parte orders as it deems necessary to protect the employee from unlawful conduct. Upon the issuance of a temporary restraining order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the respondent, whichever occurs later. When no temporary restraining order is issued, a hearing shall be held after five days' notice of the hearing to the respondent or after five days from the date of service of process on the respondent, whichever occurs first.

(c) The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Article. Except for proceedings involving a nonresident respondent, the court of competent jurisdiction of the county where the unlawful conduct occurred has jurisdiction over all proceedings under this Article. For proceedings under this Article involving a nonresident respondent, the court of competent jurisdiction where the petitioner's workplace is located has jurisdiction when the act involving unlawful conduct meets the elements for personal jurisdiction under G.S. 1-75.4.

"**§ 95-262. Relief.**

(a) The court may include any one or more of the following orders in its temporary restraining order or its injunction under this Article:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's operations, or the employer's employee at the employer's workplace.

(2) Order the respondent to cease stalking the employer's employee at the employer's workplace.

(3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.

(4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.

(5) Order the respondent not to telephone the employer or the employer's employee at the employer's workplace.

(6) Order other relief deemed necessary and appropriate by the court.

(b) An injunction issued pursuant to this Article shall be for a fixed period of time not to exceed one year. Upon application of the petitioner, a judge may renew the original or any succeeding order for up to one additional year.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city where the petitioner's workplace is located. If the petitioner's workplace is not located in a city, or is located in a city with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the workplace is located.

"**§ 95-263. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Article.

(b) A valid protective order entered pursuant to this Article shall be enforced by all North Carolina law enforcement agencies without further order of the court.

"**§ 95-264. Limits on liability of employers.**

(a) An employer and an employer's agents who act in accordance with this Article shall be presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, are immune from civil liability for actions taken under this Article.

(b) Any employer, or its employee or invitee, that does not utilize the procedures of this Article shall not be liable for negligence, and evidence of the failure to utilize the procedures of this Article shall not be admissible as evidence of negligence.

"**§ 95-265. Scope of Article; other remedies available.**

This Article does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer or employee to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. There is appropriated from the General Fund to the Attorney General's Office of the Department of Justice the sum of one thousand five hundred dollars ($1,500) for the 2003-2004 fiscal year to be used to educate the public about workplace violence.

SECTION 3. Section 1 of this act becomes effective January 1, 2004. The remainder of this act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 972*
PROPOSED COMMITTEE SUBSTITUTE S972-PCS40032-RK-44

Short Title: Execution Delay/Study. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO DELAY THE SETTING OF EXECUTIONS FOR A DEFINITE PERIOD AND TO STUDY ISSUES RELATING TO THE DEATH SENTENCE.

Whereas, the Chief Justice of the North Carolina Supreme Court has recently established a Commission on Actual Innocence to study the problems of innocent people being convicted of crimes under our State's system of criminal justice, and to recommend legislative and policy changes to attempt to correct any injustices; and

Whereas, factors that may affect the fair and impartial administration of the death penalty include the following:

(1) The adequacy of counsel for those on death row in all stages of capital cases and a risk of executing the innocent due to problems with counsel appointed prior to the enactment of current guidelines and qualifications.

(2) The potential effect of the locale of a crime on the probability that a prosecutor decides to try a homicide as a capital case.

(3) Proportionality in the use of the death penalty, including the relationship between death sentences and individual culpability for the crimes.

(4) Possible prosecutorial misconduct.

(5) The costs of the death penalty system.

(6) Possible discrimination in death penalty sentencing based on either the victim's race or the defendant's race as well as possible discrimination with regard to other aspects of capital case processing; and

Whereas, the Final Report to the 2001 General Assembly by the Legislative Research Commission's Study on Capital Punishment – Mentally Retarded and Race Basis included a recommendation that there be a moratorium on carrying out the death penalty, and that matters relating to the imposition of the death penalty be further studied. Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 15-194, or any other provision of State law, the Secretary of Correction shall not set any date prior to June 1, 2005, for the execution for any person that has been sentenced to death under State law.

SECTION 2. The General Assembly or its designees shall conduct a study to examine issues regarding the imposition of a death sentence under North Carolina law, including:

(1) The adequacy of counsel in all stages of capital cases, and the sufficiency of guidelines for the appointment and performance of such counsel.

(2) The process for judicial review of the merits of constitutional claims in State postconviction and federal habeas corpus proceedings.

(3) Any disproportionate racial impact from any aspect of capital case processing.

(4) Whether there is discrimination in capital sentencing on the basis of the victim's or the defendant's race.

(5) Prosecutorial misconduct as a factor in the imposition of the death penalty.

(6) The presence of innocent persons on death row.

(7) Any other appropriate or relevant subject.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 972:
Execution Delay/Study.

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Sen. Kinnaird
Date:	April 29, 2003	**Summary by:**	H. Alan Pell
Version:	PCS S972-CSRK-44 [v.1]		Committee Co-Counsel

SUMMARY: ***This bill would delay executions until on or after June 1, 2005. A study would be authorized to examine issues relating to the death penalty. The act would be effective when it becomes law.***

BILL ANALYSIS: The preamble sets forth factors that "may affect the fair and impartial administration of the death penalty." The Secretary of Correction's statutory authority to set execution dates would be suspended such that no prisoner with a death sentence could be executed before June 1, 2005. A study would be authorized that would consider the issues listed in Section 2 of the bill.

The act would be effective when it becomes law.

BACKGROUND: A legislative committee studying the death penalty has found that:

> "(1) Even one unmerited execution is too many to be tolerated;
>
> (2) Significant questions have been raised regarding the fairness of the State's capital punishment system;
>
> (3) Delaying executions does not equal releasing death row inmates or overturning jury verdicts;
>
> (4) Since reinstatement of the death penalty in 1977, three innocent persons have been removed from the list of those to be executed;
>
> (5) a delay would permit the State to systematically examine other significant deficiencies in the capital punishment system not examined by this committee; and
>
> (6) The interests of justice and fairness outweigh the State's interests in continuing to conduct executions at this time."

Report to the 2001 Session of the 2001 General Assembly, Legislative Research Commission, Study on Capital Punishment, page 17. The committee recommended that there be no executions until matters relating to the administration of the death penalty were "studied and analyzed to determine whether administration of the death penalty is consistent with constitutional principles and requirements of fairness, justice, equality and due process." The matters set forth in the preamble are consistent with the matters that the LRC Committee recommended as study issues.

S972-smrk-01

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-29-03

S. B. No. 972 Amendment No. #1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS 5972-CSRK-44

Rep.)
) BAGLANTINE
(Sen))

moves to amend the bill on page 2, lines 2-5

( ) WHICH CHANGES THE TITLE

by DELETING THE LINES; AND

ON PAGE 1, LINES 2+3

BY REWRITING THE LINE TO READ

"AN ACT TO STUDY ISSUES RELATING TO THE DEATH SENTENCE."

SIGNED Tony J. Rand

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

for file

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: **April 28, 2003**

TO: Sen. Kinnaird

FROM: Douglas R. Holbrook
Fiscal Research Division

RE: SB 972 Execution Delay/Study

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: Upon ratification

BILL SUMMARY: This bill prevents any executions for prisoners sentenced to death for first-degree murder convictions. It does not prevent the imposition of the death penalty in new trials. The moratorium would be in effect for two years from its effective date. During

this two-year period, the General Assembly or its designee will conduct a study examining several issues related to the fairness and process in death penalty cases.

ASSUMPTIONS AND METHODOLOGY: Since this bill does not suspend new death penalty sentences from being imposed, nor limit access to appeals, it has no impact on courts or on the Attorney General's office, which is responsible for handling the state's death penalty litigation.

The costs of executing an inmate are borne by the Department of Correction, amounting to less than $1,000 for staff overtime, contracts, and chemicals. In recent years, the State has executed two people each year, so this ban could save $2,000 per year.

SOURCES OF DATA: AOC, Department of Justice, Department of Correction

TECHNICAL CONSIDERATIONS: None.

SB-972

Twenty-one Local NC Governments That Have Passed Resolutions for A Moratorium on Executions

Asheville, City of
Carrboro, Town of
Cary, Town of
Chapel Hill, Town of
Charlotte, City of
Chatham County
Cofield, Village of
Davidson, Town of
Dobbins Heights, Town of
Durham, City of
Durham, County of
Fayetteville, City of
Garysburg, Town of
Greensboro, City of
Hillsborough, Town of
Norlina, Town of
Orange County
Taylortown, Town of
Thomasville, Town of
Winfall, Town of
Winston-Salem, City of

More than 750 churches, businesses, and community groups statewide have passed resolutions calling for a moratorium on executions.

Senate Bill 972
Execution Delay/Study

Whether a person gets the death penalty or not in North Carolina depends on three factors:

1) **RACE** - a black person is 3.5 times more likely to get the death penalty than a white person

2) **POVERTY** – 98% of the death row inmates are poor

3) **RACE OF VICTIM** – if the victim is **white** and the perpetrator is **black**, they are twice as likely to get the death penalty

While there is racial bias throughout the criminal justice system, it is much greater in death penalty cases for two reasons:

1. The first is that a person who is against the death penalty is not allowed to serve on a jury by law. Most blacks are against the death penalty so are automatically excluded by law.

2. Second, the prosecution has a choice of whom they want on the jury. The system has often been abused to exclude blacks from most death penalty juries.

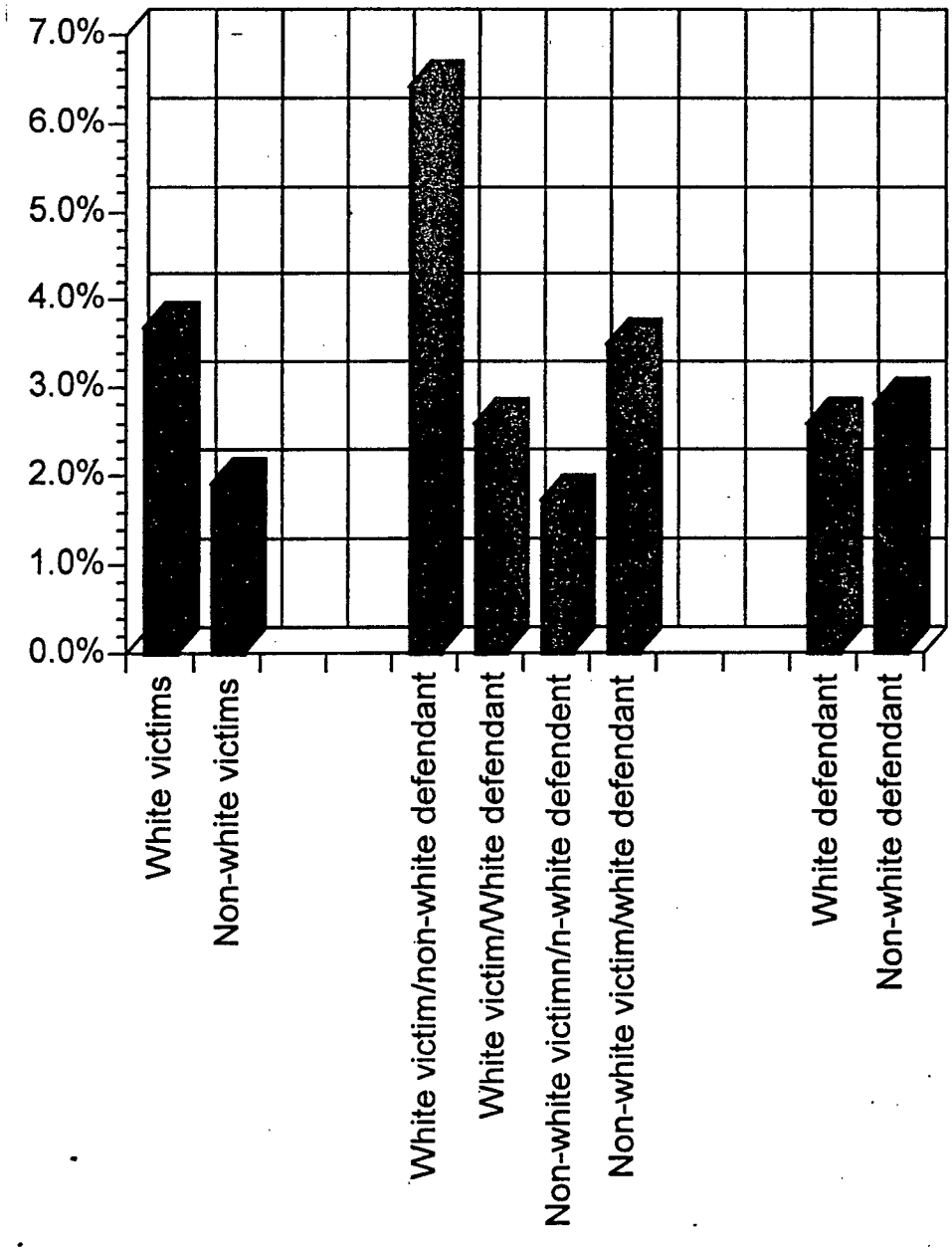
MORATORIUM ON EXECUTIONS
Additional Information

There are currently 202 persons on Death Row in North Carolina. The following statistics[i] reflect the demographics of this population.

	Male	*Percentage of Total Population*	*Female*	*Percentage of Total Population*	TOTAL
African American	115	57%	1	.5%	116
White	70	35%	3	1.5%	73
Native American	7	3.5%	1	.5%	8
Other	5	2.5%	0	0%	5
TOTAL	197		5		202

[i] North Carolina Department of Correction. www.doc.state.nc.us/DOP/deathpenalty/deathrow.htm

Comparisons of Race by Defendant & Victim



Senate Bill 972

A MORATORIUM ON EXECUTIONS FOR TWO YEARS

Information on the Existing System[i]

Δ *Death Row Demographics*

- 206 prisoners on NC Death Row
- 20 new death sentences per year
- Over 60% minority
- Over 98% poor
- Over 98% male
- Most from rural counties
  - Mecklenburg County – 600,000 residents; 10 death row prisoners
  - Bertie, Northampton, Hertford Counties – 65,000 residents; 8 death row prisoners

Δ *Who Will Die?*

- 1930 – 1960: 3, 984 executions - - 2,113 black (more than 50% when black population was approximately 15%)
- 1977 – 2002: Of executions to date, 10% were killers of people of color; 60% of homicide victims are people of color
- A killer of a white person is 3.5 times as likely to receive the death penalty

Δ *Attorney Performance*

- 17% of prisoners on Death Row were represented by attorneys who were disciplined by the State Bar while less than 1% of all attorneys are disciplined by the State Bar.

Δ *Is The Death Penalty a Deterrent to Crime?*

- 18 of the 20 states with the highest homicide rates have the death penalty
- During the last 20 years, homicide rates in death penalty states are 48% to 101% higher than non-death penalty states.
- North Carolina: 206 condemned; 23 executions - - Homicide Rate 8.1/100,000
- New York: No executions - - Homicide Rate 5.1/100,000
- Massachusetts: No death penalty, no executions - - Homicide Rate 2.0/100,000
- 82% of police believe it is inaccurate to say that murderers think about possible punishments. Furthermore, argument/heat of passion is the leading circumstance for a homicide to occur.

Δ *The Cost of the Death Penalty*

- A capital trial costs $84,000 vs. $17,000 for a noncapital trial
- Conviction costs for a capital trial are $225,000 per death sentence
- Cost of an Execution - - $2.16 million per execution
- Overall Cost - - $4 million per year for capital punishment vs. imprisonment

---

[i] James P. Cooney, Attorney; Womble, Carlyle, Sandridge & Rice

THE NEWS & OBSERVER
SUNDAY, APRIL 27, 2003

OUR VIEWS

Death row doubts

Another murder conviction is thrown out, and questions about credibility in North Carolina's legal system are looming.

Jerry Lee Hamilton is for now off North Carolina's death row, thanks to a judge who recognized an appalling flaw in his prosecution. Superior Court Judge Michael Beale of Wadesboro ruled last week that evidence that should have been available to Hamilton's defense attorneys was withheld by prosecutors or police. The ruling echoes one from December, when another judge tossed out the death sentence of Alan Gell of Bertie County, criticizing prosecutors for withholding evidence that supported Gell's claim of innocence in a 1995 murder.

The credibility of the system of justice rests on one principle: fairness. And that depends on prosecutors and police who understand that their duty is to find the truth, not to win a case. Justice is not a competition Withholding evidence is withholding justice — it is not akin to stealing a baseball catcher's signs.

In Hamilton's case, defense attorneys also say that new DNA evidence supports his claim that he was innocent in the murder of Joy Jones Goebel of Rockingham (in south-central North Carolina) in 1994. Goebel was beaten and stabbed to death. Hamilton's nephew, Johnny Ray Knight, confessed to committing the murder and led police to the body. But two months later, he said Hamilton had killed Goebel after he and his uncle had taken turns having sex with her.

Knight, before his confession, had written a letter seeking a deal with prosecutors; he was facing problems with unrelated charges and probation violations. No deal was forthcoming, and he was charged with Goebel's murder. But in his letter, Knight had offered to provide information about "a missing person." Prosecutors later reduced his charge to second-degree murder, and he's now serving time in prison.

Judge Beale said the fact that Hamilton's attorneys never knew about the letter was important, because they might have used it to support their contention that Knight made up the story about his uncle. It could have become a key part of the defense, all the more so because there was no physical evidence to link Hamilton — who had served 10 years in prison for a second-degree murder conviction in 1974 — to Goebel's slaying.

"Mr. Knight's credibility was not just a major issue in this case, it was essentially the only issue," the judge wrote. Under the law, prosecutors must provide to defense attorneys any police information that could be helpful to the defense.

This case, and the Gell case as well, expose disturbing and potentially deadly gaps in the justice system. Moreover, because these men were on death row, their sentences, if carried out, could not be corrected. There are a multitude of variances inherent in "death penalty justice," of course: some prosecutors pursue the ultimate penalty more often than others; defense attorneys possess different levels of skill; juries can be silently swayed by personalities that don't really have anything to do with the facts of a case. And clearly, if prosecutors, by omission or commission, lose sight of fairness in pursuit of victory, the whole system is flummoxed.

More than ever, it's clear that North Carolina needs to call a moratorium on application of the death penalty. Alarms have sounded.

Thursday, December 12, 2002 12:00AM EST

Death row travesty

A series of articles by The N&O's Joseph Neff raises the stakes in North Carolina's debate over the fairness of the death penalty, and not just for the series' central figure, Alan Gell.

The series makes a persuasive case that Gell wrongly sat on death row for nearly five years because jurors didn't hear compelling evidence that might have cleared him. So egregious was the state's treatment of Gell that Bertie County Superior Court Judge Cy A. Grant Sr. this week took the highly unusual step of ordering a new trial without hearing witnesses or without the state admitting mistakes. That step epitomized fairness and responsiveness on Grant's part.

Attorney General Roy Cooper said yesterday he won't fight the judge's order -- an entirely appropriate stance -- and that he'll launch a complete reinvestigation. In fact, given the exculpatory evidence that now has come to light, it looks as if the state already has ample reason to dismiss the charges that brought Gell's conviction in the 1995 shotgun slaying of Allen Ray Jenkins of Aulander.

Certainly, if the charges are dropped or if Gell is retried and cleared, North Carolinians would be left to ponder how he wound up under a sentence of death. It would represent the ultimate travesty of justice -- a man facing execution for a crime he did not commit. And if Gell could be condemned, despite the evidence in his favor, it's plausible that among the other 207 death row inmates someone else may be in the same predicament. That is just one reason, but a powerful one, for a death penalty moratorium.

As Neff's articles recounted, the small-time drug dealer and petty criminal Gell, then 20, was arrested on the word of teenager Crystal Morris and her best friend, Shanna Hall. Hall was Gell's girlfriend. Both young women were regulars at Jenkins' home, where the retired state highway department worker is said to have held loud parties replete with underage drinking and sexual escapades.

Police found Jenkins' decomposed body on April 14, 1995. Based on different accounts of the murder given by the two teenagers, the authorities determined that he had died on April 3. That happened to have been the only day Gell could have committed the crime, since he was out of the state or in jail every other day from April 2 until after the body was found.

Aulander Police Chief Gordon Godwin and agents of the State Bureau of Investigation turned up several neighbors or friends who had talked or visited with Jenkins after April 3, some as late as April 10. But in later interviews, some of them seemed to have changed the date on which they last saw Jenkins alive. That enabled their recollections to fit the theory that April 3 was the date of the murder. Police and prosecutors didn't reveal much of that pivotal evidence to Gell's lawyers.

They kept from the defense the fact that the chief witness against Gell, Crystal Morris, had changed her story about Jenkins' slaying a number of times. (She eventually pleaded guilty to second-degree murder.) They didn't reveal a taped conversation Morris had had with her boyfriend in which she apparently rehearsed her story about Gell's involvement. They gave expert witnesses partial information, leading those experts to conclude that Jenkins could have died on the only day Gell could possibly have killed him. Subsequent investigative work by Gell's

new legal team makes it nearly incontrovertible that Jenkins was shot to death several days after April 3, while Gell sat in jail for stealing a truck.

If there is a bright side to this sorry episode, it is that a legally mandated review by the defense of the prosecutorial files in Gell's case turned up the appalling failure to disclose important evidence. When publicized, that failure is what persuaded Judge Grant to order a new trial.

It would take an investigation to determine if evidence that might have convinced the jury to find for Gell's acquittal was deliberately withheld by police or prosecutors. Especially considering the punishment that awaited Gell, Attorney General Cooper ought to mount such an inquiry immediately. The General Assembly also should make sure that any authorities who knowingly hide exculpatory evidence face significant sanctions.

The death penalty faces mounting opposition in North Carolina and across the nation in large part because of cases such as Gell's. It's true that no system of justice ever will be flawless. But knowing that someone could be sent to death row even when evidence that could well have cleared him was in the state's hands is enough to raise bedrock questions about a penalty that is both extreme and irreversible.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 972*

Short Title:	Moratorium on Executions for Two Years.	(Public)
Sponsors:	Senators Kinnaird, Carpenter, Holloman, Shaw, Clodfelter, Dorsett, Malone, Dannelly, Gulley, Lucas; and Hoyle.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A TWO YEAR MORATORIUM ON EXECUTIONS.

Whereas, the Chief Justice of the North Carolina Supreme Court and the Attorney General for the State of North Carolina have both recognized that innocent people have been convicted and incarcerated under current North Carolina law; and

Whereas, the Chief Justice of the North Carolina Supreme Court and the Attorney General for the State of North Carolina therefore have recently established a Commission on Actual Innocence to study the problems of innocent people being convicted of crimes under our State's system of criminal justice and further to recommend legislative and policy changes to attempt to correct any injustices; and

Whereas, factors that may have affected the fair and impartial administration of the death penalty include all of the following:

(1) The adequacy of counsel for those on death row in all stages of capital cases and the increased risk of executing the innocent due to problems with counsel appointed prior to the enactment of current guidelines and qualifications.

(2) The effect of the locale of a crime on the probability that a prosecutor decides to try a homicide as a capital case.

(3) Proportionality in the use of the death penalty, including the relationship between death sentences and individual culpability for the crimes.

(4) Possible prosecutorial misconduct.

(5) The costs of the death penalty system.

(6) Possible discrimination in death penalty sentencing based on either the victim's race or the defendant's race as well as possible discrimination with regard to other aspects of capital case processing. Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, a moratorium is established with regard to carrying out executions imposed by courts in this State. No person who has been or is sentenced to death by a court of this State shall be executed until the moratorium ends, as provided by this act.

SECTION 2. The moratorium shall end two years from the effective date of this act. During this time period, the General Assembly or its designees shall examine the issues that underlie the need for the two-year moratorium on executions.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 160
PROPOSED COMMITTEE SUBSTITUTE S160-PCS40034-RR-1

Short Title: Delegations of Authority. (Public)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO COUNTIES AND CITIES AND TO CONFIRM FLEXIBILITY IN THE EXECUTION OF THOSE DELEGATED AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-3 is amended by adding a new subsection to read:

"(d) When any power, duty, function, privilege, or immunity is granted by general law and by a city charter, a city may freely elect to use any or all of those authorizations, either individually or in combination, and shall follow the procedures, if any, set forth for those authorities so chosen. In the case of a direct conflict or inconsistency between general law and a charter provision, the charter procedure shall control."

SECTION 2. G.S. 160A-4 reads as rewritten:

"**§ 160A-4. Broad construction.**

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of city charters~~ It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to cities. Rather, all grants of authority to cities shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers, cities shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions.

This section neither expands nor restricts the authority of cities to impose taxes pursuant to Article 9 of this Chapter or to finance public enterprises pursuant to Article 16 of this Chapter. This section neither expands nor restricts the purposes for which regulations may be adopted pursuant to Article 19 of this Chapter."

SECTION 3. G.S. 160A-177 reads as rewritten:

"**§ 160A-177. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, ~~and~~ or conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. Where a city is authorized to regulate, restrict, or prohibit acts, omissions, or conditions by this Chapter, a city may freely elect to use any or all of those authorizations, either individually or in combination; and shall follow the procedures for adoption set forth for those authorities so chosen. In the case of a direct conflict or inconsistency between a charter provision and other provision of law regarding the procedure to be employed for adoption, the charter procedure shall control."

SECTION 4. G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

(a) A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 5. Part 1 of Article 20 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-466. Revenue and expenditures for joint undertakings.**

Where two or more units of local government are engaged in a joint undertaking, they may enter into agreements regarding financing, expenditures, and revenues related to the joint undertaking. Funds collected by any participating unit of government may be transferred to and expended by any other unit of government in a manner consistent with the agreement. An agreement regarding expenses and revenues may be of reasonable duration not to exceed 99 years."

SECTION 6. Article 2 of Chapter 158 of the General Statutes is amended by adding a new section to read:

"**§ 158-7.3. Interlocal agreements concerning economic development.**

(a) Any two or more units of local government may enter into contracts or agreements to execute undertakings pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, under which each participating local government agrees to provide resources for the development of an industrial or commercial park or industrial or commercial site pursuant to G.S. 158-7.1. In consideration for that participation, the unit or units in which the park or site is located may agree to place the proceeds from some or all property taxes levied on the park or site into a common fund or transfer those proceeds to a nonprofit corporation or other entity. The proceeds placed into the common fund or transferred to the other entity may then be distributed among the participating local governments as provided in the contract or agreement.

(b) Any undertaking entered into pursuant to this section may be for that period that is agreed to by the participating local governments, up to a maximum of 40 years.

(c) Any undertaking entered into pursuant to this section is binding upon each participating local government for the duration of the contract or agreement. Any participating local government may bring an action to specifically enforce the contract or agreement."

SECTION 7. G.S. 153A-4 reads as rewritten:

"**§ 153A-4. Broad construction.**

It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of local acts~~It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to counties. Rather all grants of authority to counties shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to the exercise of the power. Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers, counties shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions.

This section neither expands nor restricts the authority to impose taxes pursuant to Article 7 of this Chapter or to finance public enterprises pursuant to Article 15 of this Chapter. This section neither expands nor restricts the purposes for which regulations may be adopted pursuant to Article 18 of this Chapter."

SECTION 8. G.S. 153A-124 reads as rewritten:

"**§ 153A-124. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor is it a limit on the general authority to adopt ordinances conferred on counties by G.S. 153A-121. Where a county is authorized to regulate, restrict, or prohibit acts, omissions, or conditions by this Chapter, by other general law, or by local act, a county may freely elect to use any or all of those authorizations, either individually or in combination, and shall follow the procedures for adoption set forth for those authorities so chosen."

SECTION 9. G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

(a) A county or its designated planning agency may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

(b) A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article.

(d) A county may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a county may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 10. This act is effective when it becomes law.

SENATE BILL 160:
Delegations of Authority

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 29, 2003	**Summary by:**	William R. Gilkeson
Version:	S160-CSRR-1 [v.4]		Committee Co-Counsel

SUMMARY: ***The PCS for Senate Bill 160 would state the General Assembly's intent to abolish a narrow rule of statutory construction called "Dillon's Rule," which courts have sometimes used to limit the way local governments can implement authority the General Assembly has given them. The bill would strengthen existing language stating the General Assembly's intent that such grants of authority should be construed broadly.*** *Sections 2 and 7 of the PCS.* ***Effective when it becomes law.***

CURRENT LAW:

The North Carolina Constitution states that local governments have only the authority given to them by the General Assembly. The General Assembly could grant or remove a local government's power to exercise a kind of authority, such as to tax a certain way or spend money a certain way. The General Assembly could even change or abolish the local government itself. Senate Bill 160 would not change that relationship.

What has been in question is (1) how narrowly or broadly a local government may interpret a power granted to it by the General Assembly, and (2) how a general law enacted by the General Assembly should be read to determine if a local government ordinance conflicts with it.

Dillon's Rule: Beginning in the 1870s, N.C. courts used "Dillon's Rule" to answer that first question. The Rule was formulated in1872 by John F. Dillon (1831-1914), who was chief justice of the Iowa Supreme Court, the first judge of the 8th Circuit U.S. Court of Appeals, a Wall Street attorney, and author of a treatise on municipal corporations. Living in the era of New York's Tweed Ring and other examples of municipal waste and corruption, Dillon was quoted as saying that "those best fitted by their intelligence, business experience, capacity and moral character" generally did not hold local office, and that the conduct of municipal affairs was generally "unwise and extravagant."

Dillon's Rule stated that local governments had only 3 types of powers:

1. ***Those granted in express words.***
2. ***Those necessarily or fairly implied in or incident to the powers expressly granted.***
3. ***Those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.***

Dillon's Rule has been interpreted to mean that if there is a reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred.

In the early 1970s, the N.C. General Assembly enacted comprehensive revisions of the G.S. chapters about cities and counties. It placed in both Chapters statutes captioned "Broad Construction," G.S. 160A-4 and 153A-4, stating:

> ***It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. The this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to the exercise of the power. . . .*** *[This is the language in the city statute; 160A-4; the county statute, 153A-4, reads slightly differently.]*

In 1990, the State Supreme Court first applied the new "broad construction" statute in River Birch Associates v. Raleigh, 326 N.C. 100, concerning a subdivision ordinance. In 1994, the Supreme Court actually said the new statute supplanted Dillon's Rule. The court had before it a challenge brought by the Homebuilders Association of Charlotte against the Charlotte City Council's imposition of "user fees" for a variety of regulatory functions and for the use of city facilities. The Homebuilders argued that the city had exceeded its legislative authority, because

while the General Assembly had authorized the city to conduct those functions, it had not authorized user fees. The city argued that the city had the right to use the fees even under the application of Dillon's Rule. The Court's opinion, written by Justice Henry Frye, said it did not matter whether the fees would stand the test of Dillon's Rule, because the General Assembly had stated a more flexible rule in G.S. 160A-4, and that, rather than Dillon's Rule, should now apply. *Homebuilders Association of Charlotte v. City of Charlotte*, 336 N.C. 37 (1994).

Later that year, however, the Supreme Court decided another case, *Bowers v. City of High Point*, 339 N.C. 413, in which it cited Dillon's Rule (not by name, but verbatim) as authority that the city did not have authority to expand police officer's separation allowance beyond the formula specified in statute. The Court's opinion, written by Chief Justice James Exum, did not mention its recent *Homebuilders* decision, and there was no dissent.

The NC Supreme Court's only later mention of Dillon's Rule by name occurred in 1999, in a dissent from its ruling in *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805 (1999), that Durham could not impose fees as a consequence of its authority to operate a stormwater and drainage system. The dissenter was Justice Frye, author of *Homebuilders*, who reminded the majority of what he said had been its earlier decision that the General Assembly by enacting its broad construction statutes in the 1970s had abolished "the now-defunct Dillon's Rule."

BILL ANALYSIS: The core sections of SB 160 are Sections 2 and 7, which address Dillon's Rule. The issue is addressed in both city statutes and the county statutes. The other sections of the bill supplement or qualify those main sections.

Sections 2 and 7 add words to the city and county "broad construction" statutes calling Dillon's Rule by name and stating the General Assembly's intent that it no longer be applied. The bill further amends those statutes to make the city and county language parallel and to state that counties have the authority to carry out their delegated powers by adopting "reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions." In an effort to avoid affecting the debate about the authority of local governments to impose "impact fees" for certain activities, language has been added to both the city and county "broad construction" sections saying the sections neither expand nor restrict the local governments' existing authority to impose taxes or to finance public enterprises, or the purposes for which regulations may be adopted for planning and development.

Other sections of the bill do the following:

- Where a city or county has multiple authorizations to act, it may use any or all of them, individually or in combination, following the procedures specified for that authority. *(Sections 1, 3, and 8.)*
- A city or county may combine ordinances into a unified ordinance with a uniform definitional and organizational structure, even if the ordinances come from different grants of authority. *(Sections 4 and 9.)*
- Authorize local governments that are jointly undertaking a development project to enter into agreements to finance the project. *Sections 5 and 6.*

BACKGROUND: SB 160 as introduced included two sections changing the standard for determining whether a State or federal act pre-empted a field from local regulation. According to the proposed new standard, the State or federal law would have to "expressly state" an intent to pre-empt local regulation, instead of the current standard of "clearly shows." **But those sections have been deleted from this PCS**.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 160

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S160-ARR-26 [v.2]

Date 4-24 ,2003

Comm. Sub. [YES]
Amends Title [NO]
S160-CSRR-1 [v.3]

Senator Clodfelter

moves to amend the bill on page 2, lines 5 through 31, and on page 4, line 30, through page 5, line 21,
by deleting Sections 3 and 7 from the bill; and

by renumbering subsequent sections of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

SENATE BILL 160

Short Title:	Delegations of Authority.	(Public)
Sponsors:	Senators Clodfelter; Dannelly, Gulley, Hartsell, Horton, Kinnaird, Malone, Reeves, and Stevens.	
Referred to:	Judiciary I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO COUNTIES, CITIES, AND BOARDS OF HEALTH AND TO CONFIRM FLEXIBILITY IN THE EXECUTION OF THOSE DELEGATED AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-4 reads as rewritten:

"**§ 160A-4. Broad construction.**

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of city charters~~ It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to cities. Rather, all grants of authority to cities shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers cities shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions."

SECTION 2. G.S. 160A-174 reads as rewritten:

"Article 8.

"Delegation and Exercise of the General Police Power.

"**§ 160A-174. General ordinance-making power.**

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute ~~clearly shows~~expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition."

SECTION 3. G.S. 160A-177 reads as rewritten:

"**§ 160A-177. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. Where there are multiple sources of authority to act, a city may freely elect to use any or all sources, either individually or in combination; provided that when a city makes such an election it shall specify which sources of authority are being employed and shall follow the procedures specified for each of those authorities elected."

SECTION 4. G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

(a) A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated

planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 5. G.S. 153A-4 reads as rewritten:

"**§ 153A-4. Broad construction.**

It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of local acts~~It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to counties. Rather all grants of authority to counties shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to the exercise of the power. Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers counties shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions."

SECTION 6. G.S. 153A-121 reads as rewritten:

"Article 6.

"Delegation and Exercise of the General Police Power.

"**§ 153A-121. General ordinance-making power.**

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health.

(d) A county ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution.

(2) The ordinance makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law.

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law.

(4) The ordinance purports to regulate a subject that counties are expressly forbidden to regulate by State or federal law.

(5) The ordinance purports to regulate a field for which a State or federal statute expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.

(6) The elements of an offense defined by a county ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude county ordinances requiring a higher standard of conduct or condition.

(e) Within the meaning of this section, a 'county ordinance' includes a rule of a local board of health adopted pursuant to G.S. 130A-39."

SECTION 7. G.S. 153A-124 reads as rewritten:

"**§ 153A-124. Enumeration not exclusive.**

The enumeration in this Article or other portions of this Chapter of specific powers to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor is it a limit on the general authority to adopt ordinances conferred on counties by G.S. 153A-121. Where there are multiple sources of authority to act, a county may freely elect to use any or all sources, either individually or in combination; provided that when a county makes such an election it shall specify which sources of authority are being employed and shall follow the procedures specified for each of those authorities elected."

SECTION 8. G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

(a) A county or its designated planning agency may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

(b) A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical

planning assistance to the other local government or planning agency. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

(c) A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article.

(d) A county may elect to combine any of the ordinances authorized by law into a unified ordinance. Unless expressly provided otherwise, a county may apply any of the definitions and procedures authorized by law to any or all aspects of such a unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of such ordinance."

SECTION 9. G.S. 130A-39 reads as rewritten:

"**§ 130A-39. Powers and duties of a local board of health.**

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c).

(b1) If a local board of health finds that a proposed local rule is required to protect and promote the public health, the fact that the local health rule may also be based in part on nonhealth grounds shall not invalidate the rule as one that exceeds the rule-making authority of the local board of health. Provisions of a local health rule that exceed the rule-making authority of the local board of health may be judicially found to be separable in accordance with a separability clause contained in the rule.

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement

that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", and for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing". Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 52
PROPOSED COMMITTEE SUBSTITUTE S52-PCS40033-RU-12

Short Title: Clarify Allowance of Court Costs. (Public)

Sponsors:

Referred to:

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions,~~Except as otherwise provided in this Article, costs may be allowed ~~or not,~~ in the discretion of the court, unless otherwise provided by ~~law.~~law, subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d)."

SECTION 3. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.

(2) Jail fees, as provided by law.

(3) Counsel fees, as provided by law.

(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server

may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) In the discretion of the court, reasonable expenses directly related to the taking of depositions, excluding attorney's fees."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 52:
Clarify Allowance of Court Costs.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	April 29, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S52-CSRU-12		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 52 clarifies that the trial court's discretion to award certain costs in civil cases is limited to those litigation expenses the General Assembly has specified as being assessable or recoverable costs. The bill also designates reasonable expenses related to the taking of depositions as being assessable or recoverable costs.***

CURRENT LAW: G.S. 6-20 currently gives the court discretion whether to award court costs to the prevailing party, except where the law specifically requires certain cost to be paid by the losing party. G.S. 7A-305(d) specifies court costs that may be assessed or recovered by the prevailing party.

BILL ANALYSIS: Section 1 makes a technical change.

Section 2 amends G.S. 6-20 to make it clear that in exercising its discretion as to whether or not to allow recovery of court costs, the court may only permit recovery of the types of cost the General Assembly has declared recoverable in G.S. 7A-305(d). (See statute attached).

Section 3 amends the list of expenses that may be assessable or recoverable to include, in the discretion of the court, reasonable expenses directly related to the taking of depositions, excluding attorneys fees.

BACKGROUND: G.S. 7A-305(d) limits assessable or recoverable costs to: 1) witness and jail fees, and attorney fees as provided by law, 2) fees for service of process, 3) cost of transcripts of testimony on appeal, 4) interpreter's fees, 5) premiums for surety bonds for prosecution under G.S. 1-109, and 6) fees for court appointees such as guardians ad litem, receivers and referees. Despite a ruling by the NC Supreme Court that assessable costs are defined by the General Assembly, the Court of Appeals has allowed cost to be recovered for such things as depositions, trial exhibits and medical review expenses, even though those expenses are not included in G.S. 7A-305(d). The Court of Appeals has interpreted G.S. 6-20 to mean that the trial court has discretion as to what costs to allow to be recovered, not whether or not to allow costs specified in G.S. 7A-305(d) as being recoverable.

EFFECTIVE DATE: The bill is effective when it becomes law.

§ 7A-305. Costs in civil actions.

....

(d) The following expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.
(2) Jail fees, as provided by law.
(3) Counsel fees, as provided by law.
(4) Expense of service of process by certified mail and by publication.
(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.
(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.
(7) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.
(8) Fees of interpreters, when authorized and approved by the court.
(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

Article 9.

Prosecution Bonds.

§ 1-109. Bond required of plaintiff for costs.

At any time after the issuance of summons, the clerk or judge, upon motion of the defendant, may, upon a showing of good cause, require the plaintiff to do one of the following things and the failure to comply with such order within 30 days from the date thereof shall constitute grounds for dismissal of such civil action or special proceeding:

(1) Give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that it will be void if the plaintiff pays the defendant all costs which the latter recovers of him in the action.
(2) Deposit two hundred dollars ($200.00) with him as security to the defendant for these costs, in which event the clerk must give to the plaintiff and defendant all costs which the latter recovers of him in the action.
(3) File a copy of an order from a superior or district court judge or clerk of a superior court authorizing the plaintiff to sue as an indigent.

The requirements of this section shall not apply to the State of North Carolina or any of its agencies, commissions or institutions, or to counties, drainage districts, cities and towns; provided, further, that the State of North Carolina or any of its agencies, commissions or institutions, and counties, drainage districts, cities and towns may institute civil actions and special proceedings without being required to give a prosecution bond or make deposit in lieu of bond.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 52

Short Title:	Clarify Allowance of Court Costs.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

In other actions, costs may be allowed or not, in the discretion of the court, unless otherwise provided by ~~law.~~ law and subject to the limitations on allowable costs set forth in G.S. 7A-305(d)."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 992

Short Title:	Protect Master Settlement Money.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE STATE'S MASTER SETTLEMENT AGREEMENT MONEY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

SECTION 2. If this act, or any portion of the amendment made to G.S. 66-291(b)(2) by this act, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this act. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes, or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other

person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

SECTION 3. This act becomes effective October 1, 2003.

SENATE BILL 992:
Protect Master Settlement Money

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Garrou
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 992 would amend the law that establishes how much money a tobacco product manufacturer who does not participate in the national tobacco Master Settlement Agreement has to place in escrow against possible future damage claims by the states. This amendment would change the determination of the amount to be placed in escrow from being based on the allocable share per state to an allocable share of units of tobacco sold in each individual state.***

CURRENT LAW: As part of the national tobacco Master Settlement Agreement (MSA) each state was required to enact the Model Escrow Statute to cover the liability of Non-Participating Manufacturers (NPMs) and to create a level competitive playing field by preventing NPMs from undercutting the market due to savings from not having to make payments to the states like participating manufacturers.

The current model escrow statute, enacted as Article 37 – Tobacco Reserve Fund in Chapter 66 of the General Statutes. The amount a NPM currently has to put into escrow in the State based on their sales n the State that exceeds what their allocable share would have been had they participated may be refunded to the NPM from their escrow.

BILL ANALYSIS: Section 1 of the bill would amend the formula for a NPM's funds to be released from escrow by changing the determination from what the NPM's allocable market share would have been had they participated to a calculation based on the tobacco units sold in the State.

Section 2 contains a severability clause if either this provision or the underlying subsection is found to be unconstitutional that effectively restores the law as it exists prior to this amendment.

BACKGROUND: The Model Escrow Statute (Tobacco Reserve Fund in NC) was intended to create a reserve against which claims could be made against tobacco product manufacturers who were not given immunity from suit by participating in the Master Settlement Agreement. It was also intended to reduce the competitive advantage a manufacturer would gain from not having to make payments to the states under the MSA and not being subject to the advertising restrictions agreed to in the MSA.

The current formula for escrow payments presumes sales nationwide on the same allocable share as under the MSA. If a NPM focuses a large portion of their sales in one state, their allocable share under the current escrow statutes may be far less than the comparable payment a participating manufacturer has to make based on a per unit sold basis under the MSA. This amendment puts NPMs on the same basis for determining the amount of payments they are require to make into escrow as the participating manufacturers are required to make to the states under the MSA.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

SB-992

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

BANK OF AMERICA CENTER
1111 EAST MAIN STREET
RICHMOND, VIRGINIA 23219
www.troutmansanders.com
TELEPHONE: 804-697-1200
FACSIMILE: 804-697-1339

MAILING ADDRESS
P.O. BOX 1122
RICHMOND, VIRGINIA 23218-1122

Anthony F. Troy
tony.troy@troutmansanders.com

Direct Dial: 804-697-1318
Direct Fax: 804-698-5162

April 22, 2003

The Honorable Daniel G. Clodfelter
Senator and Chairman, Judiciary I Committee
408 Legislative Office Building
Raleigh, NC 27603-5925

The Honorable David W. Hoyle
Senator
300-A Legislative Office Building
Raleigh, NC 27603-5925

The Honorable R. C. Soles, Jr.
Senator
2022 Legislative Building
Raleigh, NC 27601-2808

The Honorable Phil Berger
Senator
1121 Legislative Building
Raleigh, NC 27601-2808

The Honorable Patrick J. Ballantine
Senator and Republican Leader
1127 Legislative Building
Raleigh, NC 27601-2808

The Honorable Charles W. Albertson
Senator
525 Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Robert C. Carpenter
Senator
517 Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Wib Gulley
Senator
623 Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Cecil Hargett
Senator
620 Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Hamilton C. Horton, Jr.
Senator
1117 Legislative Building
Raleigh, NC 27601-2808

The Honorable Jeanne Hopkins Lucas
Senator
300-G Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Vernon Malone
Senator
2113 Legislative Building
Raleigh, NC 27601-2808

The Honorable Stephen M. Metcalf
Senator
300-B Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Tony Rand
Senator
Majority Leader
300-C Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Clark Jenkins
Senator
409 Legislative Office Building
Raleigh, NC 27603-5925

Re: Senate Bill 992

Dear Senators

I write in regard to Senate Bill 992 on behalf of the Council of Independent Tobacco Manufacturers of America ("CITMA"). The membership of CITMA consists of independent tobacco companies all located within the United States who have chosen to compete in the cigarette tobacco manufacturing business and are doing so fully compliant with the "rules of the game." Such rules were established in 1999 when the various states, and major tobacco companies entered into the Master Settlement Agreement ("MSA") which required settling states to enact the model or qualifying statute – G.S. 66-291(b) ("Model Statute"). The Model Statute requires those tobacco manufacturers that have not signed the MSA to make certain escrow payments and such tobacco manufacturers that do so are considered to be "fully escrow compliant." In other words, the membership of CITMA consists of fully escrow compliant companies seeking only to compete as the free enterprise system of our country allows.

Let me emphasize that the membership of CITMA does not consist of any "cheaters," foreign or otherwise, who are not making the proper escrow payments. Moreover, Senate Bill 992 does not have anything to do with providing the proper tools to the office of Attorney General of North Carolina to ensure that that office can enforce escrow obligations upon companies who are not participating in the MSA but are doing business in North Carolina. Our membership understands that escrow payments are an obligation of doing business in North Carolina and other states. Admittedly, some tobacco manufacturers do not make proper escrow payments, but they are first not members of CITMA, and, secondly, for those companies this Legislature enacted last year House Bill 348, otherwise known as the "contraband statute" to ensure that the Attorney General's office did have proper tools to enforce the escrow requirements. Our membership supports in general the contraband statute.

Currently, the MSA and the Model Statute North Carolina enacted (G.S. 66-291(b)) operates in a fair and balanced manner. Original Participating Manufacturers (OPMs which include Philip Morris and RJR, Brown & Williamson and Lorillard) make certain nationwide payments, a portion of which (North Carolina's share is 2.3322850%) goes to North Carolina (as well as 46 other states and Puerto Rico, Guam, American Samoa, the Northern Mariana Islands and the U.S. Virgin Island – 4 states, Minnesota, Mississippi, Texas and Florida, do not participate in the MSA since in their respective states cases were litigated and settled independently). Subsequent Participating Manufacturers (SPMs) in large part do not pay any monies but nonetheless have received waivers of liability from North Carolina and will pay monies only if their market share exceeds that which existed in 1998 or 125% of their 1997 market share whichever is greater. Non Participating Manufacturers (NPMs) must make escrow payments. Currently, those escrow payments are based on the formula in the Model Statute or what the NPM would have paid the state had it been a signatory to the MSA, whichever is less. In short, the current economic conditions require that NPMs pay into North Carolina the same amount of money that OPMs pay into North Carolina, but NPMs unlike the OPMs are not able to deduct such payments as ordinary business expense.

Senate Bill 992 would drastically change the "rules of the game" and require that any NPM in North Carolina must pay into escrow the equivalent amount of money that it would pay if it was operating on a national basis including not only the 46 states but Guam, American Samoa, Puerto Rico, etc. It would in essence significantly increase the cost of doing business and in large part destroy the ability of small independent tobacco manufacturers to compete, and the end result would be an enhanced market share for OPMs. That is the purpose and the result of the bill.

There are many reasons why this legislation is unfair, unlawful, and even perhaps unconstitutional. You may, however, have been told of justifications for the statute including perhaps a document issued on the letterhead of the National Association of Attorneys General entitled "Changes To The Applicable Share Provision of The Model Escrow Statute." First, though on the letterhead of the National Association of Attorneys General ("NAAG"), this is not a position paper that has been endorsed by the National Association of Attorneys General through NAAG's recognized approval process. Instead, these talking points emanate, we are advised, from the NAAG Tobacco Task Force and its staff. Secondly, the document itself is fatally flawed in many ways. For example, this document indicates that Senate Bill 992 is needed to help discourage minors from buying cigarettes and goes on to assert without any citation of authority that "studies have ... demonstrated that cheap cigarettes are favored by kids ...." NAAG staff, however, knows that a survey by SAMHSA, a sub agency of HHS (Health and Human Services) demonstrates that the most popular brands among teens are the most advertised brands of Marlboro, Campbell and Newports and that these three brands together, based on the survey of smokers between the ages of 12 and 17 years of age, accounted for over 90% of their purchases; however, it is RJR who has been recently charged or assessed with monetary sanctions for breaching the advertising to youth restrictions in the MSA, not any NPMs.

More important, the document suggests that passage of Senate Bill 992 would not in any manner put the state's MSA payments at risk. This suggestion is not only erroneous, but it ignores findings and conclusions which certain courts have already made. The predicate asserted is that the only parties who could make a challenge would be individuals who are signatories to the MSA and that they (the OPMs and SPMs) and the respective states are in agreement to the passage of this bill. What NAAG neglects to even mention, however, is that the Fourth Circuit, in the *Star Scientific* case (278 F.3d 339 2002), held that in that case, Star (an NPM whose claimed injuries were traceable to the requirements of the MSA including the Model Statute enacted as a result of what the Court described as "coercion" to enact a qualifying statute), did have standing to challenge not only the statute but the MSA itself. Couple that decision with the provisions of the Constitution of North Carolina, Article 1, Section 34 prohibiting monopolies, North Carolina's assent along with other states in signing the MSA, that the MSA was fair and allocable and that the Consent Decree entered in North Carolina settling the litigation between the State and the OPMs explicitly provides that the Consent Decree and final judgment (which as indicated includes and incorporates the MSA and thus also the Model Statute) "shall not be modified ... unless the party seeking modification demonstrates by clear and convincing evidence that it will suffer irreparable harm from new and unforeseen conditions" and goes on to state that "changes in the economic conditions of the parties shall not be grounds for modification," suggest that there are numerous legal theories that the Model Statute cannot and should not be changed.

Lastly, this view point was also taken by the North Carolina General Assembly Legislative Services office (see attached) when, in a memorandum dated August 28, 2001, it stated, in response to an offer from a North Carolina independent tobacco producer to make direct payments to the State which would become state money as opposed to making escrow payments, that the state could not accept such offer since it chose "... to join in the MSA and is bound by its terms." The memorandum went on to state that North Carolina as part of the agreement enacted SL 99-211, which is now G.S. 66-291(b) and under the terms of the MSA the state agreed to and had to enforce that model act and keep it in full force and effect. Obviously, this is consistent with the MSA where North Carolina and other states agreed not only to enact "the Model Statute" but to do so "without modification or addition."

This legislation will unbalance the playing field that was carefully crafted in 1999 and do nothing other than to protect and further enhance OPMs' market share by burdening substantially the cost of doing business for NPMs, all while clearly putting at potential risk the Master Settlement monies that North Carolina receives which this year exceeded $110 million. For these reasons, CITMA asks that you reject this measure and allow the free market place to work.

With kindest regards, I am

Very truly yours,

Anthony F. Troy

2080/2968/1153662v2
Enclosure

AUG 30 2001

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Tony C. Goldman, Director
Administrative Division
Room 9, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

James D. Johnson, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Dennis W. McCarty, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 28, 2001

MEMORANDUM

TO: Representative Howard
FROM: Barbara Riley, Staff Attorney
RE: Tobacco Settlement: Alternative Brands, Inc.

Per your request, I have reviewed the letter from Mr. Calvin Phelps proposing an alternative financial arrangement between his company, Alternative Brands, Inc., and the State of North Carolina to that provided for in the Master Settlement Agreement between the States and the major tobacco companies.

Alternative Brands, Inc. is not a party to the Master Settlement Agreement (MSA) and is therefore considered a "Nonparticipating Manufacturer" (NPM) under the provisions of the agreement. Pursuant to the MSA and the legislation enacted individually by the participating States known as the "Model Act", NPM's are required to either join the MSA and make settlement payments accordingly, or fund a separate escrow account in the amount that would be required if the company were a participating manufacturer. The purpose of this requirement is to neutralize any cost disadvantage that the participating manufacturers might have vis-à-vis the NPM's as a result of the provisions of the MSA.

As an alternative, Mr. Phelps has proposed that his company make direct payments to the State in the amount of $.50 per carton (approximately $2.5 million annually) instead of either of the 2 options available to the company under the MSA. Currently, the terms of the MSA and the model act require Alternative Brands to make payments of approximately $3 per carton. Mr. Phelps estimates, however, that North Carolina only receives approximately $350,000 annually of the $15 million dollars paid by Alternative Brands.

Briefly, I have two concerns about Mr. Phelps' proposal. The first is that the State has chosen to join in the MSA and is bound by its terms. As a part of the MSA, the State agreed to enact the "model act" as outlined above. North Carolina complied with this provision of the MSA by enacting S.L.99-311.. Further, under the terms of the MSA, the State has agreed to enforce its "model act" and to use its best efforts to keep the act in force, including defending the act in any litigation.

My second concern is that Mr. Phelps' proposal may not have the desired result of increasing revenues to the State. While certainly the amount of money received from Alternative Brands would increase, the settlement payments made to the State under the MSA are likely to decrease significantly as a result of the failure to abide by the terms of the agreement. Provisions of the MSA specifically provide that if a State does not enact, or is otherwise unable to enforce its "model act" then the State's share of the funds available to it under the MSA are to be reduced by an amount known as the "nonparticipating manufacturers adjustment" (NPM adjustment). The MSA provides a detailed formula for the calculation of the NPM adjustment based upon the percentage of revenue lost by the participating cigarette manufacturers as a result of the MSA. Mr. Phelps' proposal does not appear to take into consideration any reduction in the amount of the settlement payments that the State of North Carolina would receive if it were subject to the NPM adjustment.

I hope the above is helpful to you. Please let me know if you have questions or need further information.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 992

Short Title:	Protect Master Settlement Money.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE STATE'S MASTER SETTLEMENT AGREEMENT MONEY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

SECTION 2. If this act, or any portion of the amendment made to G.S. 66-291(b)(2) by this act, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this act. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes, or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other

person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

SECTION 3. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 974
PROPOSED COMMITTEE SUBSTITUTE S974-PCS35265-RU-32

Short Title: Notification of Private Roads. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING NOTIFICATION TO BUYERS OF PRIVATE ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-102.6(f) reads as rewritten:

"(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer ~~and~~ or seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer ~~and~~ or seller as a public street, the developer ~~and~~ or seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer ~~and~~ or seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer ~~and~~ or seller as a private street, the developer ~~and~~ or seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of ~~such~~ the street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original ~~which~~ that shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof."

SECTION 2. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 974

Short Title:	Amend Public Laws.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Rules and Operations of the Senate.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

(1)

F/- Committee — 4-29-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gerda Stein	CDPL
Cynthia Shearin	5 Points Raleigh
Bill Osbern	Greensboro, NC
Stephanie Hunter	Conover, NC
Tom Fewel	Chapel Hill, NC
Calvin Phelps	Alternative Brands
MICHAEL WEISEL	TAYLOR PENLY
Rev. Charles Howe	Community Church of Chapel Hill Purefoy Rd., Chapel Hill, NC
Rev. Jim VIGEN	NC SYNOD (ELCA) Office of Advocacy Ministry
Stephanie Simpson	NC Assn. of REALTORS, INC
Rick Zechini	NC Assn. of REALTORS®

(2)

VISITOR REGISTRATION SHEET

J-1 Comm

Name of Committee

4-29-04

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Rogers	NC REALTORS®
Pamela D. Dill	NC Assoc. Realtors®
Cindy Chandler	Realtor Commercial Alliance of NCAR
Chris Nichols	Hunton + Williams
Julia White	NC DOJ
J Bley	DOJ
Norman Sherwood	TVC
Katherine Davis	ElectriCities
Bob Slocum	NC Poultry Assn
R. Paul Wilson	NCHBA
Erica Peterson	NC Agribusiness Council

VISITOR REGISTRATION SHEET

J/Comm. — Name of Committee

4-29-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Work	Chapel Hill
Rob Schofield	NC Justice Center
Erik Hunter	Raleigh, NC
Jonathan Tart	NCDOR
Gregg Martin	NCDOR
Cam Cover	BPMHL
Jane Volland	Guardian ad Litem/AOC
[illegible]	[illegible]
Gary Salamido	GSK
Sandy Sawyer	UCAR
Bill Mathers	NCAR
Ross Rhudy	NCAR
JASON SIRMON	NCAR
Ashley Barker	NCAR

Name	Firm or Agency and Address
Dick Carlton	Carlton & Harrelson PLLC
Brian Lewis	Planned Parenthood
Sam Poole	Ward & Smith
Bill Martin	" "
Virginia Hebert	~~The~~ Senator Kinnaird
Dallas Baker	Intern - Sen. Gallen
TED FRAZER	Lobbyist

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gretchen M. Engel	Durham, NC
Mark Kleinschmidt	Town of Chapel Hill
Sonya Rudenstine	Durham, NC
Shelagh Kenney	Durham, NC
Robin Rogers	Durham, NC
Dina DiMaio	NCBA
Dan McLaughlin	NC Attorney General's Office
Mel Chilton	NC Victim Assistance Network Raleigh, NC
Chet Hodgin	Victims of Violence High Point NC
A.A. DeLeon	Victim/Witness Advocate
David Mills	Common Sense Foundation
George Reed	NC Council of Churches

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	ACLU
Jim Coleman	Duke Law School
David Neal	Fair Trial Initiative
[signature]	[signature]
David Ferrell	Vandeventer Black LLP
Bill Kenerly	DA 19C
Branny Vickory	DA-8
Rob Johnson	DA-15A
G. Dewey Hudson	DA- 4th
Sandy Demeree	Center for Death Penalty Litigation
Kerry Rachel Little	ACLU of North Carolina, Raleigh

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 776

Short Title:	Workers' Comp/Definition of Employee.	(Public)
Sponsors:	Senators Dalton, Clodfelter; Ballantine, Bingham, Hartsell, Hoyle, Lucas, Smith, and Stevens.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an

emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term 'employee' shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

'Employee' shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

'Employee' shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, 'authorized pickup firefighter' means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

'Employee' shall not include any person performing services in the delivery or distribution of newspapers or shopping news, unless the delivery or distribution is to any point for subsequent delivery or distribution. 'Employee' shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person, regardless of whether the person is guaranteed an amount of compensation for the service or is entitled to be credited for the amount the person had been charged for the unsold newspapers or magazines that are returned."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 993
PROPOSED COMMITTEE SUBSTITUTE S993-PCS35253-RU-25

Short Title: An Act to Safeguard Children. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE ABILITY OF THE STATE BOARD OF EDUCATION TO SAFEGUARD SCHOOLCHILDREN THROUGH AUTOMATIC REVOCATION OF TEACHER CERTIFICATES UPON CONVICTION OF CERTAIN CRIMES, AND THE USE OF INVESTIGATIVE SERVICES AS NEEDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates.

(1) The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d).

(2) The State Board shall automatically revoke the certificate of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in

offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, G.S. 14-204; and child abuse under either G.S. 14-318.2 or G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's certificate unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

(3) In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

~~(1)~~a. The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

~~(2)~~b. The assistance team assigned to that school makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates. In addition, the Board shall have the authority to contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the Board in the proper disposition of allegations of misconduct by certificated persons."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 993:
An Act to Safeguard Children.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Garrou
Date:	April 22, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S993-CSRU-25 [v.2]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 993 would require the State Board of Education to automatically revoke the certificate of a teacher or school administrator upon receipt of proof that the person has been convicted of murder, rape or other serious felonies of sexual misconduct or child abuse.***

CURRENT LAW: Current law does not specifically authorize the State Board of Election to revoke teacher or school administrator certification for conviction of certain crimes.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 993 would amend the law that governs teacher and school administrator certification by the State Board of Election, to add as an additional ground for the revocation of a certificate the final conviction of certain serious felonies and misdemeanors, including murder, rape, assault with a deadly weapon with intent to kill or inflict serious injury, kidnapping, abduction of children, crimes against nature, incest, sexual misconduct involving minors, sexual exploitation of a minor, indecent liberties with children and students, and child abuse.

The bill requires before acting that the Board receive a certified copy of the criminal record showing the conviction, and verification that the record applies to the teacher or school administrator. Written notice to the teacher or school administrator that revocation action is being considered on the grounds set forth in the bill must be given, including notification that the person may challenge that the criminal record is for another person. If challenged, the Board may not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

The bill also authorizes the State Board to contract for any services necessary to comply with this subsection.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 993

Short Title: An Act to Safeguard Children. (Public)

Sponsors: Senators Garrou; Dalton, Hagan, and Stevens.

Referred to: Judiciary I.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE ABILITY OF THE STATE BOARD OF EDUCATION TO SAFEGUARD SCHOOLCHILDREN THROUGH A COORDINATED PROGRAM OF PROFESSIONAL ETHICS AND DISCIPLINE THAT INCLUDES THE AUTOMATIC REVOCATION OF TEACHER CERTIFICATES UPON CONVICTION OF CERTAIN CRIMES, THE USE OF HEARSAY TESTIMONY IN ADMINISTRATIVE HEARINGS TO REVOKE TEACHER CERTIFICATES, AND THE USE OF INVESTIGATIVE SERVICES AS NEEDED.

Whereas, although the vast majority of the State's certificated educators conduct themselves professionally and devote themselves to the education and welfare of the children who are entrusted to their care, within the last 12 years the State Board of Education has experienced nearly a four thousand percent (4,000%) increase in the number of allegations of educator misconduct that it has received, from 7 in 1991 to 271 in 2002; and

Whereas, many of these allegations involve improper sexual conduct between the educator and one or more students; and

Whereas, this trend is indicative of similar occurrences in other states as well as in other professions; and

Whereas, many of these allegations require a more thorough investigation of the facts than the Board is currently equipped to conduct; and

Whereas, the Board has in some cases been challenged in its effort to revoke a license based upon admitted sexual activity with a student or upon a criminal conviction such as taking indecent liberties with a child; and

Whereas, some criminal convictions in and of themselves indicate that the defendant should forfeit his or her ability to hold a certificate; and

Whereas, professional educators hold a crucial position of trust with respect to the children they educate; and

Whereas, the Board is committed to providing all students with safe, orderly, and caring schools that are staffed by professional personnel who act consistently for the best interests of those students; and

Whereas, if all children are to have the opportunity to learn and develop into healthy, productive adults as envisioned by the ABCs of Public Education and by the No Child Left Behind Act of 2001, the State must take every reasonable step to provide our children with professional educators who serve as positive role models as indicated in Faulkner v. New Bern-Craven County Board of Education, 65 N.C. App. 483 (1984); Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296 reads as rewritten:

"**§ 115C-296. Board sets certification requirements.**

...

(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, ~~$30.00.~~$35.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, ~~$30.00.~~ $35.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, ~~$55.00.~~$60.00.

(4) Initial application for New, In-State Approved Program Graduate, ~~$55.00.~~$60.00.

(5) Initial application for out-of-State certificate, ~~$85.00.~~$90.00.

(6) All other applications, ~~$85.00.~~$90.00.

The applicant must pay the fee at the time the application is submitted.

...

(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). The State Board shall automatically revoke the certificate of a teacher or school administrator without the right to notice and a hearing upon receiving a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; any misdemeanor assault under G.S. 14-33 where the victim is a minor; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination

to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, G.S. 14-204; and child abuse under either G.S. 14-318.2 or G.S. 14-318.4. In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

(2) The assistance team assigned to that school makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates. In addition, the Board shall have the authority to contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the Board in the proper disposition of allegations of misconduct by certificated persons.

In any administrative hearing conducted under Article 3 of Chapter 150B of the General Statutes involving the revocation or proposed revocation of a teacher's or school administrator's certificate, the parties may admit into evidence any hearsay testimony that the administrative law judge determines is relevant to the issues involved in the hearing.

..."

SECTION 2. This act is effective when it becomes law.

(1)

VISITOR REGISTRATION SHEET

J-1 Comm. — 4-22-03 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Wilson	St. Bd. of Educ.
Judy Tyson	SBE/DPI
Roz Scott	NCCC
Ben Ball	DCD-DHHS
Sheila McKenzie	DHHS
Dallas Baker	Intern - Sen. Gulley
[illegible]	NCFB
Teri Saylor	NCPA -
[illegible]	"
Gene Ainsworth	RSA
[illegible]	Bone and Assoc

VISITOR REGISTRATION SHEET

J-1 | 4-22-03 PM

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NC Dept of Correction
Patricia Yancey	ACLU

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
THURSDAY	MAY 8, 2003	10:00 a.m.	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	HB-42	Criminal Unauthorized Recordings	Rep. Goodwin/Hall/Moore/Stiller
•	HB-842	Help America Vote Act Compliance	Rep. Michaux/Stam
•			

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

May 8, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with ten members present. He introduced Pages, Andrea Sutton from Raleigh, NC and Matthew Banner from Conover, NC.

HB-42 (Criminal Unauthorized Recordings) Committee Substitute was introduced by Senator Clodfelter. He stated that the bill would be discussed, but not voted on at this time. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Wayne Goodwin explained the changes to the bill. Mr. Richard Gusler, Recording Industry Association of America and Mr. Bill Scoggin, Microsoft Corporation spoke on the bill. Senator's Charlie Albertson and R.C. Soles had questions. Representative Goodwin answered the questions. Senator Clodfelter said he would appoint a Subcommittee to study the bill. Senator Charlie Albertson, Chair and Senator's Phillip Berger, Clark Jenkins and Robert Carpenter as members of the committee. The Subcommittee will bring their results back to the next meeting. The bill was displaced at this time.

HB-842 (Help America Vote Act Compliance) was introduced by Senator Clodfelter. Bill sponsor's Representative Mickey Michaux and Paul Stam explained that the bill is designed to comply with six provisions of the Help America Vote Act of 2002. HAVA requires that all States comply with these provisions regardless of whether they receive federal money. See Bill Summary for further details. Mr. Gary Bartlett, NC State Board of Elections spoke on the bill. Senator Clodfelter asked Staff Attorney, Bill Gilkeson to explain the bill in detail. Senator's Tony Rand, Charlie Albertson, Ham Horton and R.C. Soles had questions. Representative Michaux, Mr. Bartlett and Staff Attorney Jerry Cohen answered the questions. The bill was displaced at this time.

Being no further business the meeting adjourned at 10:54 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 42

Committee Substitute Favorable 3/17/03

Short Title: Criminal Unauthorized Recordings. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~The following definitions apply in this Article:

(1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds or images,

or both, that are being transmitted is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for ~~such~~ these purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, ~~such~~ the article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any ~~such~~ article for profit, or possess for ~~such~~ those purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434~~G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting ~~therefrom~~from the violation, including actual, compensatory and incidental damages."

SECTION 5. G.S. 14-437(a) reads as rewritten:

"(a) Every individual act in knowing contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony with a maximum fine of one hundred fifty thousand dollars ($150,000) if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB 42 2nd Edition

SHORT TITLE: Criminal Unauthorized Recordings

SPONSOR(S): Representatives Goodwin, Hall, Moore, & Stiller

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
Judicial					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
TOTAL EXPENDITURES:	Unable to determine exact amount; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Unable to determine exact number of beds; no substantial impact anticipated				
POSITIONS: (cumulative)	Unable to determine exact amount; additional positions not anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE:

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY[1]: HB 42 clarifies the statutory provisions that prohibit the transfer of a copyrighted work to another medium, the recording of a live performance, and the manufacture and distribution of unlawfully transferred recordings. The bill amends current G.S. 14-137 (a) to reduce the number of "articles" involved to qualify the offense as a Class I felony and to reduce the number of articles to qualify the offense as a Class 1 misdemeanor. Violations of Article 58 (Records, Tapes, and Other Recorded Devices) are a Class 1 misdemeanor except in cases where (1) The offense involves at least 100 unauthorized articles during any 180-day period, or (2) a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period. These exceptions are punishable as a Class I felony.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Data on the number of offenders convicted during FY 2001-2002 under G.S. 14-137(a) are not available because the Administrative Office of the Courts does not have a specific offense code for these offenses. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. Therefore, it is not known how many offenders the bill might affect.

In regards to Section 2 of the bill, it is not known how many additional convictions may result from the proposed expansion of the statute to cover "live performances" which is subject to a Class 1 misdemeanor under the bill. In addition, because Section 3 of the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced for this proposed offense. In FY 2001-2002, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences of which the average estimated time served was 35.2 days. While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails but paid for by the State at a cost of $18/day. Because offenders serving active sentences of 90 days or less are housed in county jails, additional Class 1 misdemeanors are not expected to have a significant impact on the prison population.

Section 5 of the bill rewrites G.S. 14-337(a) to reduce the number of articles involved to qualify the offense as a Class I felony and to reduce the number of articles involved to qualify the offense as a Class 1 misdemeanor. The North Carolina Sentencing Commission does not expect a significant

[1] North Carolina General Assembly Research Division.

impact on the prison population from the reclassification of a Class 2 misdemeanor offense to a Class 1 misdemeanor offense. However, it does anticipate a slight impact on prison beds as a result of the reclassification of a Class 1 misdemeanor to a Class I felony. If, for example, there were 10 convictions that moved from a Class 1 misdemeanor to a Class 1 felony, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

HB 42 enhances punishment under G.S. 14-137(a) by reducing the number of offense categories to two—Class I felony and Class 1 misdemeanor—and by reducing the numeric threshold for the numbers of recordings that trigger more serious punishment. Thus, some cases that are now Class 1 misdemeanors would become Class I felonies and some Class 2 misdemeanors would become Class 1 misdemeanors under the bill. AOC is currently unable to estimate the number of defendants currently charged with offenses under the bill, as it does not have offense codes for most of the offenses in Article 58. For the one offense for which there is presently an offense code, data reveal that no defendants were charged during calendar year 2002. Because the bill reduces the numeric threshold for the number of recordings that trigger more serious punishment, court costs may slightly increase. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is $4,602. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $220. For offenses that are brought to trial as a Level 1 misdemeanor, the estimated court cost per trial is $2,248. For Level 1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $177.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser
and
Douglas Holbrook, Jr.

APPROVED BY: James D. Johnson, Director Fiscal Research Division

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 42

Committee Substitute Favorable 3/17/03

Short Title: Criminal Unauthorized Recordings. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~The following definitions apply in this Article:

(1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds or images,

or both, that are being transmitted is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for ~~such~~ these purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, ~~such~~ the article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any ~~such~~ article for profit, or possess for ~~such~~ those purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434~~,G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting ~~therefrom~~,from the violation, including actual, compensatory and incidental damages."

SECTION 5. G.S. 14-437(a) reads as rewritten:

"(a) Every individual act in knowing contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony with a maximum fine of one hundred fifty thousand dollars ($150,000) if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 842

Committee Substitute Favorable 4/7/03
Third Edition Engrossed 4/22/03

Short Title: Help America Vote Act Compliance. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SYSTEM FOR ALL NORTH CAROLINA ELECTIONS THAT COMPLIES WITH THE HELP AMERICA VOTE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.

SECTION 2. G.S. 163-82.10(a) reads as rewritten:

"(a) ~~Application Form Becomes~~ Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application ~~form~~ form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a

county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. The county board of elections shall maintain custody of ~~the official~~ any paper hard copy registration records of ~~all~~ voters in the county and shall keep them in a place where they are secure."

SECTION 3. G.S. 163-82.10 is amended by adding a new section to read:

"(a1) Paperless, Instant Electronic Transfer. – The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document."

SECTION 4. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

SECTION 5. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document."

SECTION 6. G.S. 163-82.11 reads as rewritten:

"**§ 163-82.11. Establishment of statewide computerized voter registration.**

(a) Statewide System as Official List. – The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration

information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. – The State Board of Elections shall develop and implement the system so that each county board of elections ~~can:~~ can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another ~~county;~~ county.

(2) Be notified automatically that a registered voter in its county has registered to vote in another ~~county; and~~ county.

(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. – Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its ~~own computer file of registered voters~~ records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall ~~transmit~~ enter through the computer ~~network~~ system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer ~~file.~~ system. ~~The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.~~"

SECTION 7.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of ~~rules~~ guidelines relating to computerized voter registration.**

The State Board of Elections shall make all ~~rules~~ guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These ~~rules~~ guidelines shall include provisions ~~for:~~ for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration ~~file;~~ file.

(2) Linking the central file through a network with computerized voter registration files in each of the ~~counties;~~ counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration ~~applications;~~applications.

(4) Protecting and securing the ~~data; and~~ data.
(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.
(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.
(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.
(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.
(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board."

SECTION 7.(b) G.S. 163-82.19 reads as rewritten:

"**§ 163-82.19. Voter registration at drivers license ~~offices.~~ offices; coordination on data interface.**

(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate ~~county~~ board of elections.

(b) Coordination on Data Interface. – The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002. The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002."

SECTION 8. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.7A. Voter education and information.**

(a) Posting The Information. – For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163-165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. – The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002."

SECTION 9. G.S. 163-82.4 reads as rewritten:

"**§ 163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number, or, if the applicant does not have a drivers license number the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement 'If you checked "no" in response to either of these questions, do not complete this form'.

If the voter fails to check the box set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election."

SECTION 10. G.S. 163-82.10A reads as rewritten:

"**§ 163-82.10A. Permanent voter registration numbers.**

~~Each county board of elections~~ The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections."

SECTION 11. G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002, with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

(1) Types, makes, and models of voting systems approved for use in this State.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination of voting systems before use in an election.
(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 12. G.S. 163-165.4A reads as rewritten:

"**§ 163-165.4A. ~~Punch-Card ballots.~~Punch-card ballots and lever machines.**

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A 'lever machine voting system' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment."

SECTION 13. G.S. 163-182.1 reads as rewritten:

"**§ 163-182.1. Principles and rules for counting official ballots.**

(a) General Principles That Shall Apply. – The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot

shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

~~(b) Rules and Directions by State Board of Elections. The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.~~

(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall provide that if the voter selects votes for more than the

number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

(1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

(2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

(3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 14. G.S. 163-166.01 reads as rewritten:

"**§ 163-166.01. Hours for voting.**

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

SECTION 14.1. G.S. 163-166.7 reads as rewritten:

"**§ 163-166.7. Voting procedures.**

(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If the chief judge states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. – If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.

(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election.

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot

was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 16. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a

provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 17.(a) Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 8A.

"HAVA Administrative Complaint Procedure.

"**§ 163-91. Complaint Procedure.**

(a) The Board shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the Board is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the Board shall complete all of the following:

(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.

(2) Accept oral and written comments on the proposed complaint procedure.

(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."

SECTION 17.(b) G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(c) Full Exemptions. – This Chapter applies to every agency except:

...

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes."

SECTION 18. G.S. 163-256 reads as rewritten:

"**§ 163-256. Regulations of State Board of Elections.**

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of ~~G.S. 150B-9.~~ Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials."

SECTION 19. G.S. 163-245 reads as rewritten:

"**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
(3) Disabled war veterans in United States government hospitals.
(4) Civilians attached to and serving outside the United States with the armed forces of the United States.
(5) Members of the Peace Corps.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 20. G.S. 163-247(3) reads as rewritten:

"(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, ~~held during the calendar year the application was received.~~ held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election."

SECTION 21. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.27. Help America Vote Act of 2002.**

As used in this Chapter, the term the 'Help America Vote Act of 2002' means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002."

SECTION 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.

HOUSE BILL 842:
Help America Vote Act Compliance.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Michaux and Stam
Date:	May 8, 2003	**Summary by:**	William R. Gilkeson
Version:	Third Edition		Committee Co-Counsel

SUMMARY: House Bill 842 is designed to comply with six provisions of the Help America Vote Act of 2002. HAVA requires that all States comply with these provisions regardless of whether they receive federal money. But HAVA's mandate only applies to federal elections. The bill essentially says to the State Board of Elections and other agencies: "Change North Carolina's election system to comply with HAVA, but make that system apply to all elections in NC, not just federal elections."

The requirements of HAVA deal with the following topics:

1. ***Statewide voter registration system.*** *Sec. 303(a) of HAVA.*
2. ***Standards for voting equipment.*** *Sec. 301 of HAVA.*
3. ***Provisional voting.*** *Sec. 302 of HAVA.*
4. ***I.D. for certain 1st time voters who register by mail.*** *Sec. 303(b) of HAVA.*
5. ***Administrative complaint procedure.*** *Sec. 402 of HAVA.*
6. ***Uniformed and Overseas Absentee Voters.*** *Title VII of HAVA.*

In addition, HB 842 contains 5 provisions not required by HAVA:

1. ***Paperless voter registration using electronically captured signatures.*** *Sections 3 & 4 of the bill.*
2. ***Exemption of drivers license number, social security number, and signature from public records law if on voter registration form.*** *Section 5 of the bill.*
3. ***State Board of Elections's duty to update its statewide voter registration list to reflect felons restored to citizenship after completing their sentences.*** *Section 6 of the bill.*
4. ***A phase-out by 2006 of lever machines.*** *Section 12 of the bill.* ***(HAVA provides funding for their replacement, but does not mandate their phase-out. HAVA also provides funding for phasing out punch-card equipment: N.C. decided in 2001 to phase out punch-cards.)***
5. ***A requirement that all voters sign a pollbook or other document before voting.*** *Section 14.1 of the bill.*

Statewide voter registration system

(Sections of the bill dealing with)

Sec. 2. – Makes the statewide VR system the official list for conduct of all elections. County paper document is a backup to statewide list. *(to comply with Sec. 303 of HAVA.)* Continues to require re-registration if move to another NC county. *Effective 1-1-04.*

Sec. 3 – **VR application may be paperless.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 4 – **Electronically captured signature of VR applicant suffices for signature requirement.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 5 – **Exempts DL # or SS # or signature from public records law if on VR application.** *(not to comply with HAVA but to prevent unintended consequences of loss of privacy.) Effective when it becomes law.*

Sec. 6 – Defining role of State Board and of county boards in maintaining VR. Requires State Board to update list to comply with HAVA. *(to comply with Sec. 303 of HAVA.)* **This section also does something not required by HAVA: It requires the State Board to update the statewide list to reflect the restoration of citizenship rights to ex-felons.** *Effective 1-1-04.*

Sec. 7(a) – Directs State Board to adopt guidelines for administering statewide VR system. *(to comply with Sec. 303 of HAVA.)* Exempts those guidelines from NC APA. *Effective 1-1-04.*

Sec. 7(b) – Directs DOT to coordinate with State Board in computer match-up of DMV and VR names. Requires DOT to enter into similar pact with U.S. Commissioner of Social Security. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Sec. 9 – Changes contents of the voter registration form. Adds DL # and SS #. Requires State Board issuance of unique identifier # if no DL or SS has been issued. Adds the verbatim citizenship and age questions required by HAVA. *(to comply with Sec. 303 of HAVA. Effective 1-1-04.*

Sec. 10 – Requires assignment of unique identifier to everyone. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Standards for voting equipment

(Sections of the bill dealing with)

Sec. 11 – Expands State Board's authority over approval and disapproval of voting systems, requires it to make those systems comply with HAVA. *(to comply with Sec. 301 of HAVA.) Effective 1-1-06.*

Sec. 12 – Amends the section enacted in 2001 that prohibited punchcards and gave current users till 2006 to get rid of them. **Adds lever machines to this abolition.** *(not an absolute requirement of HAVA, but logical if State accepts early-out HAVA money to replace punchcards and lever machines.) Effective when it becomes law.*

Sec. 13 -- Amends the vote-counting statute to require the SBOE to adopt procedures and standards for voting systems, including defining what is a vote and what will be counted as a vote on every voting system used in the State. *(to comply with Sec. 301 of HAVA.)* Exemption from NC APA. The bill specifies that optical scan systems must return an overvoted ballot to the voter for correction before the vote is accepted and counted. *Effective 1-1-06.*

Provisional Voting

(Sections of the bill dealing with)

Sec. 8. – Requires that certain HAVA-required information, including how to vote provisionally, be posted at voting place. *(to comply with Sec. 302(b) of HAVA.) Effective 1-1-04.*

Sec. 14 – If voting hours extended by court order, afterhours voters must vote by provisional ballot. *(to comply with Sec. 302 of HAVA.) Effective 1-1-04.*

Sec. 15 –Provisional voting omnibus section. Includes the right-to-know provision of HAVA, giving provisional voter a confidential, cost-free means of finding out whether the vote was counted and if not, why not. *(to comply with Sec. 301 of HAVA.) Effective 1-1-04.*

I.D. requirement for certain 1st time voters

(Section of the bill dealing with)

Sec. 16 – I.D. requirement for voters who registered by mail after 1-1-03 and are casting their first federal vote in NC and didn't put DL or SS # on VR form. *(to comply with Sec. 301(b) of HAVA.) Effective 1-1-04.*

Administrative Complaint Procedure

(Section of the bill dealing with)

Sec. 17 – Complaint procedure to remedy grievances for violation of HAVA. *(to comply with Sec. 402 of HAVA.)* The draft basically delegates to the State Board the creation of a complaint procedure to comply with HAVA.. It exempts the procedure from the APA. HAVA says the procedure must be open to any person who believes there's been a violation of HAVA, must be finally decided within 90 days unless complainant agrees to an extension, and must provide alternative dispute resolution if the normal means don't yield a result in 90 days. *Effective 1-1-04.*

Uniformed and Overseas Absentee Voting

(Sections of the bill dealing with)

Sec. 18 – Makes SBOE single office for info about uniformed and overseas voters. *(to comply with Sec. 702 of HAVA) Effective when it becomes law.*

Sec. 19 – Makes changes to UO voters provision, including removal of any start date for application. *(to comply with Sec. 706 of HAVA) Effective 1-1-04.*

Sec. 20 – Extends validity of UO absentee application through two general elections. *(to comply with Sec. 704 of HAVA) Effective 1-1-04.*

Signature requirement for all voters

(Section of the bill dealing with)

Sec. 14.1 – In a provision not required by HAVA, the House added a requirement that all voters must sign the pollbook, other voting record, or voter authorization document before voting. If the voter is unable to sign, a precinct official shall enter the voters name on the proper document before the voter votes. *(Not required by HAVA.)* ***Effective 1-1-04.***

From the Senate Appropriations Bill (identical to provision in House Bill):

PART XXV. STATE BOARD OF ELECTIONS

Requested by: Senators Swindell, Garrou, Dalton, Hagan

HELP AMERICA VOTE ACT MATCHING FUNDS

SECTION 25.1.(a) Of the funds appropriated to the State Board of Elections for the 2003-2004 fiscal year by Section 2.1 of this act:

(1) The sum of $1,791,936 is transferred to a Reserve Fund to meet the Maintenance of Effort requirements of section 254(a)(7) of the Help America Vote Act, Public Law 107-252.

(2) The sum of $1,665,650 currently appropriated to Fund 1100 Administration for the SEIMS RCC is transferred to a Reserve Fund for the State Board of Elections.

(3) The sum of $2,524,400 is transferred to the Election Fund established by S.L. 2003-12 to meet the five percent (5%) matching requirement of Title II Help America Vote Act, Public Law 107-252. It is estimated that the amount needed for the 2003-2004 fiscal year will be $1,130,000. The funds shall be available only for matching federal funds under HAVA for the 2003-2004, 2004-2005, and 2005-2006 fiscal years. The money shall only be expended as federal funds are available to match, and if the amount available to the State is less than projected, the unexpended remainder of the $2,524,400 shall revert to the General Fund on the earlier of:

a. June 30, 2006; or

b. A determination by the Office of State Budget and Management that the unexpended remainder will not be needed.

SECTION 25.1.(b) The 107th Congress established the Help America Vote Act (HAVA) as Public Law 107-252 establishing a program to assist in the administration of Federal elections and provide assistance with the administration of certain Federal elections laws and programs; establish minimum election administration standards for States and units of local government with the responsibility for the administration of Federal elections. In HAVA, Congress authorized appropriations for elections assistance in the form of a matching grant program (Title II of HAVA, Requirements Payments) for which states are required as one condition of the Election Assistance Requirements Payments to match federal allocations with a five percent (5%) match of State dollars. The federal government has additional requirements, including a required state plan and a stipulation for each participating state to implement the Maintenance of Effort (MOE) requirements of Title II, section 254(a)(7) of HAVA. The MOE requires that the state maintain the expenditures of the state for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year

ending prior to November 2000. Congress authorized up to $1.4 billion for Requirements Payments, and $810 million for Title II requirements grants was funded for fiscal year 2003. Title II requirements funding has not been passed by Congress for fiscal years 2004-2005 and 2005-2006 but is currently proposed at $500 million for each year.

Based upon the 2003 approved funding, it is estimated that North Carolina will receive $22.6 million of the Title II funding if North Carolina meets all the conditions of the Election Assistance program, including not only the five percent (5%) state match but also maintenance of its expenditure level on HAVA activities at the expense level the State Board of Elections had in State fiscal year 1999-2000. Actual expenditures for the State Elections Information Management System (SEIMS), which is a qualified HAVA activity, in 1999-2000 was three million four hundred fifty-seven thousand five hundred eighty-five dollars and six cents ($3,457,585.06). The authorized expenditures on SEIMS in 2002-2003 by the State Board of Elections is one million six hundred sixty-five thousand six hundred fifty dollars ($1,665,650). The difference in expenditure levels is one million seven hundred ninety-one thousand nine hundred thirty-five dollars and six cents ($1,791,935.06). To meet HAVA's Title II MOE requirement, North Carolina has to appropriate from its General Fund to a Reserve on a recurring basis (or for as long as Congress requires the MOE as a condition of states' being eligible to receive Requirements Payments), the amount of three million four hundred fifty-seven thousand five hundred eighty-five dollars and six cents ($3,457,585.06) annually.

For the State to meet its obligatory five percent (5%) match for HAVA's Title II Requirements Payment, North Carolina has to match twenty-two million six hundred thousand dollars ($22,600,000) estimated federal funds in 2003-2004; thirteen million nine hundred forty-four thousand dollars ($13,944,000) estimated federal funds in both 2004-2005 and 2005-2006. The State's match is one million one hundred thirty thousand dollars ($1,130,000) in 2003-2004; six hundred ninety-seven thousand two hundred dollars ($697,200) in 2004-2005 and six hundred ninety-seven thousand two hundred dollars ($697,200) in 2005-2006. The nonrecurring match total required from the General Fund is two million five hundred twenty-four thousand four hundred dollars ($2,524,400).

HAVA

The Help America Vote Act of 2002

William R. Gilkeson, Counsel, House Committee on Election Laws and Campaign Finance Reform.
March 18, 2003

Enacted in response to the flaws exposed in the American election system in the 2000 Presidential election, especially in Florida, where the closeness of the election held the flaws up to the light for everyone to see.

The bill was passed last fall by a Republican-controlled House and a Democratic-controlled Senate, so it is a bipartisan bill filled with bipartisan compromises. Some of the compromises were hard to arrive at, and that's one of the reasons the bill being is so hard to read. Unlike with much congressional legislation, there is no committee report that explains the intent behind HAVA. When asked why not, a congressional staff attorney who worked on the bill said the conferees on the bill were barely able to agree upon the wording of the bill – they would never have been able to agree on a statement of what it meant!

The bill provides a lot of money to the States. And it makes several important requirements of the States. The requirements apply only to elections for federal office. Most States, presumably, would not want to have one system for federal elections and a separate system for State and local elections, so legislation by the General Assembly will be required to enact the changes so N.C. will have a uniform system compliant with HAVA.

HAVA contains two pots of money for the States.

- The first pot, called "early out money," will be granted to States according to a formula based on population. All receipt of that money requires is an act of the Governor requesting the money. North Carolina gets in the neighborhood of $9 million. No State match is required. That money, if accepted by the State, must be used to replace punchcard and lever machine voting equipment. N.C. has seven counties that still use punchcards, including Forsyth and Cabarrus, and four that still use lever machines. If there is some of the $9 million left over, that can be used for a number of other purposes that are listed on P. 5 of the bill. Title I of HAVA.
- The second pot of money, the much bigger pot, is called "requirements money," and it is to be used to help bring the State into compliance with HAVA's requirements. According to the original authorization in HAVA North Carolina would have received some $83 million of requirements money over a period of three fiscal years. According to President Bush's

recommended budget, however, the money would be much less than that -- closer to $50 million over the three years. The requirements money requires a 5% State match for each year. It also requires the State to maintain its level of funding. The chief state election official (Gary Bartlett) is required to submit a State Plan by this September describing how NC will spend the money. Title II of HAVA.

The State must set up an Election Fund in which to administer grants received. § 254 of HAVA.

Now for the Requirements. They are contained in Title III of HAVA. They are basically in six categories:

1. **Statewide Voter Registration System** --- § 303 of HAVA.

- Must comply by 1-1-04.
- NC also has head start.
- Must have single, computerized, official list.
- Must have unique identifier for every voter in the State.
- All county VR information must go into the Big List on an "expedited basis" – means 24 hours.
- Must be coordinated with other agency databases in the State.
- List maintenance must be done through the Big List.
- State must not "accept or process" a VR application unless the voter provides their current and valid DL # if they have one, and if they don't have a DL #, the last 4 digits of their SS #, and if they don't have either, State must provide a unique I.D. # for them.
- State must put certain citizenship and age question verbatim on its VR form.
- State must use computerized lists from DMV, CSS to verify validity of the numbers.

2. **Standards for Voting Equipment** --- § 301 of HAVA.

- Must comply by 1-1-06.
- All voting equipment must allow voter to independently and privately verify how they voted.
- Must allow voter to independently and privately correct their vote.
- If voter overvoted, must tell the voter they overvoted and what that means, and give them an opportunity to correct that. For punchcard, paper ballots, or central count systems, this can be satisfied by having an educational program and providing instructions to the voter in the polling place.

- Audit capacity: (Relevant to DREs). Permanent paper record with manual audit capacity, voter has opportunity to correct before paper is produced, paper record shall be available as official record for a recount.
- Accessibility for disabled. Must have one DRE machine in each precinct where disabled, including blind, can vote with the same privacy and independence as other voters. Means recording with earphones.

3. Provisional Voting --- § 302 of HAVA.

- Must comply by 1-1-04.
- NC ahead of many States in that we already have provisional voting.
- Must allow anyone who shows up at polls and claims to be eligible to vote there to vote there.
- Must provide a toll-free, private way for voter to find out whether their provisional vote was cast, and if it wasn't, why it wasn't. Must notify any provisional voter of that right.
- If any voter votes after the regular poll hours because of a court order extending those hours, they vote provisionally.
- Information must be posted in the voting place:
    1. Sample ballot.
    2. Poll opening and closing hours.
    3. Instructions on how to vote, including provisionally.
    4. Instructions for first-time voters who must present an I.D.
    5. Information on State and federal laws on voting rights.
    6. Information on State and federal laws against fraud and misrepresentation.

4. I.D. Requirements for First Time Voters Who Register by Mail --- § 303 of HAVA.

- Must comply by 1-1-03.
- Any voter who is voting in their first federal election in the State who has registered by mail on or after 1-1-03, must provide an I.D. before voting in person or absentee . . .
- . . . unless the voter provided a D.L. # or SS # on the registration form or mailed in with the registration form one of the I.D.s. Also exempted from I.D. if they can vote absentee under UOCAVA or VAEHA.
- For absentee voting, you mail the I.D. in with the ballot.
- The I.D. can be either a current and valid photo identification (HAVA doesn't say what kind) or a current utility bill, bank statement, paycheck or other govt document that shows the name and address of the voter.
- If don't have the I.D., can vote provisionally.

5. Administrative Complaint Procedure --- § 402 of HAVA.

- Must be open to any person who believes there has been a violation of HAVA.
- Must be finally decided within 90 days unless complainant agrees to an extension.
- Must provide an alternative dispute resolution if the normal procedure doesn't yield a result in 90 days.

6. Uniformed and Overseas Absentee Voters --- § Title VII of HAVA

- Requires a single office in the State for information about uniformed and overseas voting.
- No absentee application from uniformed or overseas voter may be rejected for being submitted too early.
- One application for uniformed or overseas voting must be good 2 general elections.

HAVA creates a new federal agency, the Election Assistance Commission, which must adopt "voluntary guidelines" to help States comply. Title II of HAVA

The U.S. Attorney General, however, may bring a civil action against any State in U.S. District Court for declaratory or injunctive relief. USDOJ plans to issue statements about its views on the act. § 401 of HAVA.

[DOCID: f:publ252.107]

[[Page 1665]]

HELP AMERICA VOTE ACT OF 2002

[[Page 116 STAT. 1666]]

Public Law 107-252
107th Congress

An Act

To establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes. <<NOTE: Oct. 29, 2002 - [H.R. 3295]>>

Be it enacted by the Senate and House of <<NOTE: Help America Vote Act of 2002.>> Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short <<NOTE: 42 USC 15301 note.>> Title.--This Act may be cited as the ``Help America Vote Act of 2002''.

(b) Table of Contents.--The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I--PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF PUNCH CARD AND LEVER VOTING MACHINES

Sec. 101. Payments to States for activities to improve administration of elections.
Sec. 102. Replacement of punch card or lever voting machines.
Sec. 103. Guaranteed minimum payment amount.
Sec. 104. Authorization of appropriations.
Sec. 105. Administration of programs.
Sec. 106. Effective date.

TITLE II--COMMISSION

Subtitle A--Establishment and General Organization

Part 1--Election Assistance Commission

Sec. 201. Establishment.
Sec. 202. Duties.
Sec. 203. Membership and appointment.
Sec. 204. Staff.
Sec. 205. Powers.

Sec. 206. Dissemination of information.
Sec. 207. Annual report.
Sec. 208. Requiring majority approval for actions.
Sec. 209. Limitation on rulemaking authority.
Sec. 210. Authorization of appropriations.

Part 2--Election Assistance Commission Standards Board and Board of Advisors

Sec. 211. Establishment.
Sec. 212. Duties.
Sec. 213. Membership of Standards Board.
Sec. 214. Membership of Board of Advisors.
Sec. 215. Powers of Boards; no compensation for service.
Sec. 216. Status of Boards and members for purposes of claims against Board.

[[Page 116 STAT. 1667]]

Part 3--Technical Guidelines Development Committee

Sec. 221. Technical Guidelines Development Committee.
Sec. 222. Process for adoption.

Subtitle B--Testing, Certification, Decertification, and Recertification of Voting System Hardware and Software

Sec. 231. Certification and testing of voting systems.

Subtitle C--Studies and Other Activities To Promote Effective Administration of Federal Elections

Sec. 241. Periodic studies of election administration issues.
Sec. 242. Study, report, and recommendations on best practices for facilitating military and overseas voting.
Sec. 243. Report on human factor research.
Sec. 244. Study and report on voters who register by mail and use of social security information.
Sec. 245. Study and report on electronic voting and the electoral process.
Sec. 246. Study and report on free absentee ballot postage.
Sec. 247. Consultation with Standards Board and Board of Advisors.

Subtitle D--Election Assistance

Part 1--Requirements Payments

Sec. 251. Requirements payments.
Sec. 252. Allocation of funds.
Sec. 253. Condition for receipt of funds.
Sec. 254. State plan.
Sec. 255. Process for development and filing of plan; publication by Commission.
Sec. 256. Requirement for public notice and comment.
Sec. 257. Authorization of appropriations.
Sec. 258. Reports.

Part 2--Payments to States and Units of Local Government To Assure Access for Individuals With Disabilities

VISITOR REGISTRATION SHEET

①

J-1 Comm. — Name of Committee

5-8-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hall	Democracy North Carolina
Elizabeth Curtis	NCPIRG
David Anders	PFFPNC
Don McCorquodale	SAS
Ed TURLINGTON	Brooks Pierce
Beau Mills	NCEM
Paul Meyer	NCACC
John Phelps	NCLM
Al Ripley	NC Justice Ctr
Keith Corbett	Self-Help
Dany O. Bartlett	SBoE

(2)

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

5-8-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Wright	State Bd. of Elections
Johnnie McLean	" " "
Cheris Poucher	Wake County Board of Elections
Hugh Tilson	NCHA
Bill Scoggin	KCCH
Richard Fuke	AHA
[illegible]	SABOMA
Roger Bone	Bone & Assoc.
[illegible]	AOAL, PA
[illegible]	NCORA
Dick Coulton	Coulton & Alexander PLLC

(3)

VISITOR REGISTRATION SHEET

J-1 Comm — Name of Committee

5-8-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCRA
Paul Stock	NC Bankers Assn.
Rep. Dan Ray	NC House
RAY RIFFE	NC AFL-CIO
Mike Causey	NC Glass Assn
FRAN PRESTON	NCRMA
Bill Welch	NCATL
Paul Purdy	NCATL

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	MAY 13th	10:00 a.m.	1027 LB

REVISED NOTICE: SB 1017 REMOVED FROM AGENDA

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
•	HB-42	Criminal Unauthorized Recordings	Rep. Goodwin/Hall/Moore/Stiller
•	HB-65	Autopsy Photos Not Public Record	Rep. Ray
•	HB-126	Evidence in Juvenile Hearings	Rep. Glazier/Moore
•	HB-842	Help America Vote Act Compliance	Rep. Michaux/Stam
•	HB-952	Clarifying Change/Family Law Arbitration Act	Rep. Hackney

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

May 13, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 10:03 a.m. with fourteen members present. He introduced Pages, Jesse Ellington from Apex, NC, and Briana Manese from Youngsville, NC.

HB-42 (Criminal Unauthorized Recordings) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson, Chair of Subcommittee moved for adoption of Committee Substitute. All members voted yes. Motion carried. Staff Attorney, Hal Pell explained that the bill would clarify laws relating to the unauthorized transfer of copyrighted works, the recording of live performances for sale, or the sale of unauthorized copies of works. The act would enhance the penalty provisions by reducing the number of unlawful articles involved to categorize the offense as a felony. See attached Bill Summary for further information. Senator Ham Horton had a question. Mr. Pell answered the question. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

HB-952 (Clarifying Change/Family Law Arbitration Act) was introduced by Senator Clodfelter. In the absence of bill sponsor, Representative Wayne Goodwin, Staff Attorney, Walker Reagan explained that the bill would allow parties who participate in family law arbitration to agree not to have the final award confirmed by the court. See attached Bill Summary for further information. Senator's Jeanne Lucas and Patrick Ballantine had questions. Mr. Reagan answered the questions. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

HB-65 (Autopsy Photos Not Public Record) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Karen Ray explained that the bill would provide that photographs and video and audio recordings of official autopsies are not public records. See attached Bill Summary for further information. Mr. Dan Barker, Managing Editor of the News & Observer Newspaper spoke on the bill. Senator's David Hoyle, Vernon Malone and Patrick Ballantine had questions. Ms. Karen Cochran-Brown from NCGA Research Department answered the questions. Senator Clodfelter asked Senator Ballantine to work with Representative Ray to amend language in the bill. Bill was displaced to be heard at a future time.

HB-126 (Evidence in Juvenile Hearings) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Representative Rick Glazier explained that the bill

would clarify the current practice in juvenile dispositional, review, and permanency planning hearings to permit the introduction of hearsay evidence in order to determine the needs of the juvenile and the most appropriate disposition. See attached Bill Summary for further information. Senator's Phillip Berger, R.C. Soles, Wib Gulley and Patrick Ballantine had questions. Representative Glazier answered the questions. Senator Ballantine moved for a Favorable Report. All members voted yes. Motion carried.

HB-842 (Help America Vote Act Compliance) Committee Substitute was introduced by Senator Clodfelter. Staff Attorney, Bill Gilkeson explained the changes made to the bill. Senator Clodfelter stated that the bill would be discussed, but not voted on at this time. Senator Wib Gulley had a question. Mr. Garry Bartlett from NC Board of Elections spoke on the bill and answered the question. The bill was displaced.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, May 14, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **42** Criminal Unauthorized Recordings.

Draft Number:	PCS50282
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 13, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **126** Evidence in Juvenile Hearings.
Sequential Referral: None
Recommended Referral: None

H.B. **952** Clarifying Change/Family Law Arbitration Act.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 42

Committee Substitute Favorable 3/17/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H42-PCS50282-RK-48

Short Title: Criminal Unauthorized Recordings. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~The following definitions apply in this Article:

(1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be

perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds or images, or both, that are being transmitted is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for ~~such~~ these purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, ~~such~~ the article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any ~~such~~ article for profit, or possess for ~~such~~ those purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in webcasting or radio or television broadcasting who transfers, or causes to be transferred, any such sounds other

than from the sound track of a motion picture intended for, or in connection with webcast, broadcast or telecast transmission or related uses, or for archival purposes. An Internet service provider who is solely providing a conduit for access to the Internet, shall not be deemed to be using, or causing to be used, recordings that may be transferred over the Internet by third parties in violation of this Article."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434~~,G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting ~~therefrom~~,from the violation, including actual, compensatory and incidental damages."

SECTION 5. G.S. 14-437(a) reads as rewritten:

"(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony with a maximum fine of one hundred fifty thousand dollars ($150,000) if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio-visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 42:
Criminal Unauthorized Recordings.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Goodwin, Hall, Moore, & Stiller
Date:	April 13, 2003		
Version:	PCS [H42-csrk-48 v. 6]	**Summary by:**	H. Alan Pell Committee Co-Counsel

SUMMARY: This bill would clarify laws relating to the unauthorized transfer of copyrighted works, the recording of live performances for sale, or the sale of unauthorized copies of works. The act would enhance the penalty provisions by reducing the number of unlawful articles involved to categorize the offense as a felony. The act would be effective December 1, 2003, and would apply to offenses committed on or after that date.

CURRENT LAW: Federal copyright law preempts State law with regard to prosecutions of persons who transfer copyrighted works from one fixed medium to another. Federal law does not preempt State law for the unlawful transfer of sound recordings that were originally fixed prior to February 15, 1972. The State may prosecute a person for selling a recording if the true name of the manufacturer is not on the product. Federal courts have held that these types of statutes (e.g., G.S. 14-435) have a consumer protection function; consequently, this type of statute is not preempted by federal copyright law.

BACKGROUND: Last Session, a similar bill (SB 1123) received a favorable report from this Committee, passed the Senate, and received a favorable report from House Judiciary III. The bill was not voted on by the House before *sine die* adjournment.

BILL ANALYSIS:

Section 1 would amend G.S. 14-432 by reorganizing the definitions and adding a new term -"fixed" – that would be defined using the definition from federal copyright law.

Section 2 would amend G.S. 14-433 to clarify that Internet service providers who are only providing third parties with a means of delivery, or conduit, for the transfer of recordings are not "using, or causing the use of" recordings that might be transferred in violation of the Article.

Section 3 would amend G.S. 14-435 to require additional information to be displayed on the packaging of recordings. The statute is not preempted by federal copyright law.

Section 4 would amend G.S. 14-436 by substituting "Article" for "Chapter."

Section 5 would rewrite G.S. 14-337(a) to reduce the number of "articles" involved to charge a Class I felony. The number of articles involved to qualify the offense as a Class 1 misdemeanor would also be changed. The term "article" includes both sound recordings and audio-visual works. The changes would clarify, for example, that it is not the number of individual recordings on a compact disc (the tangible medium) that are counted to determine the classification of the offense; it is the number of compact discs (the "articles" to be counted).

Section 6: The act is effective December 1, 2003, and applies to offenses committed on or after that date.

[OVER FOR PENALTY COMPARISON]

PENALTY	CURRENT LAW	2nd EDITION
CLASS I FELONY	*1ST Offense*: 1000+ sound recordings 100+ AV During 180-day period *2nd & Subseq Offense:* 101+ sound recordings 11-99 AV During 180 day period	*1st & 2nd Offense*: 100+ articles During 180-day period *3rd & Subseq. Offense:* 26+ articles During 180-day period
CLASS 1 MISDEMEANOR.	*1st Offense:* 101-999 sound 11-99 AV During 180 day period	*1st & 2nd Offense:* 1-99 articles No time period *Subseq Offense:* 1-25 articles No time period
CLASS 2 MISDEMEANOR	*All Offenses:* 1-100 sound 1-10 AV No time period	

H42-SMRK-01 (Senate) Robin Johnson, Staff Attorney, substantially contributed to this summary.

(c) Except as provided herein, all statements filed under this section must be prepared in accordance with the appropriate NAIC Annual Statement Instructions Handbook and pursuant to the NAIC Accounting Practices and Procedures Manual and on the NAIC Model Financial Statement Blank, unless further modified by the Commissioner as the Commissioner considers to be appropriate. This subsection does not apply to statements filed by a town or county mutual organized under G.S. 58-7-75(5)d. if for the preceding year it had a direct written premium of less than one hundred fifty thousand dollars ($150,000) and fewer than 400 policyholders. (1899, c. 54, ss. 72, 73, 83, 90, 97; 1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s. 4698; C.S., s. 6280; 1945, c. 383; 1957, c. 407; 1985, c. 666, ss. 50, 51; 1985 (Reg. Sess., 1986), c. 1013, s. 11; 1991, c. 681, s. 7; 1993, c. 504, s. 1; 1998-211, s. 22; 1999-192, s. 1.)

Editor's Note. — Session Laws 1999-192, s. 1, which rewrote subsection (a); added subsection (a1); added "provided that ... pursuant to subsection (a1) of this section" to the end of subsection (b); and in subsection (c), added "Except as provided herein" and added the second sentence, became effective retroactively to October 30, 1998, pursuant to section 2 of the act.

CASE NOTES

Stated in State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979).

Cited in In re North Carolina Auto. Rate Admin. Office, 278 N.C. 302, 180 S.E.2d 155 (1971); State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 124 N.C. App. 674, 478 S.E.2d 794 (1996), cert. denied, 346 N.C. 184, 486 S.E.2d 217 (1997).

§ 58-2-170. Annual statements by professional liability insurers; medical malpractice claim reports.

(a) In addition to the financial statements required by G.S. 58-2-165, every insurer, self-insurer, and risk retention group that provides professional liability insurance in the State shall file with the Commissioner, on or before the first day of February in each year, in form and detail as the Commissioner prescribes, a statement showing the items set forth in subsection (b) of this section, as of the preceding 31st day of December. The annual statement shall not be reported or disclosed to the public in a manner or format which identifies or could reasonably be used to identify any individual health care provider or medical center. The statement shall be signed and sworn to by the chief managing agent or officer of the insurer, self-insurer, or risk retention group, before the Commissioner or some officer authorized by law to administer oaths. The Commissioner shall, in December of each year, furnish to each such person that provides professional liability insurance in the State forms for the annual statements. The Commissioner may, for good cause, authorize an extension of the report due date upon written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(b) The statement required by subsection (a) of this section shall contain:

(1) Number of claims pending at beginning of year;
(2) Number of claims pending at end of year;
(3) Number of claims paid;
(4) Number of claims closed no payment;
(5) Number and amounts of claims in court in which judgment paid:
    a. Highest amount
    b. Lowest amount
    c. Average amount
    d. Median amount;

PENALTY	CURRENT LAW	2nd EDITION
CLASS I FELONY	*1ST Offense*: 1000+ sound recordings 100+ AV During 180-day period *2nd & Subseq Offense:* 101+ sound recordings 11-99 AV During 180 day period	*1st & 2nd Offense*: 100+ articles During 180-day period *3rd & Subseq. Offense:* 26+ articles During 180-day period
CLASS 1 MISDEMEANOR.	*1st Offense:* 101-999 sound 11-99 AV During 180 day period	*1st & 2nd Offense:* 1-99 articles No time period *Subseq Offense:* 1-25 articles No time period
CLASS 2 MISDEMEANOR	*All Offenses:* 1-100 sound 1-10 AV No time period	

H42-SMRK-01 (Senate) Robin Johnson, Staff Attorney, substantially contributed to this summary.

HOUSE BILL 42:
Criminal Unauthorized Recordings.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Goodwin, Hall, Moore, & Stiller
Date:	April 13, 2003		
Version:	PCS [H42-csrk-48 v. 6]	**Summary by:**	H. Alan Pell Committee Co-Counsel

SUMMARY: This bill would clarify laws relating to the unauthorized transfer of copyrighted works, the recording of live performances for sale, or the sale of unauthorized copies of works. The act would enhance the penalty provisions by reducing the number of unlawful articles involved to categorize the offense as a felony. The act would be effective December 1, 2003, and would apply to offenses committed on or after that date.

CURRENT LAW: Federal copyright law preempts State law with regard to prosecutions of persons who transfer copyrighted works from one fixed medium to another. Federal law does not preempt State law for the unlawful transfer of sound recordings that were originally fixed prior to February 15, 1972. The State may prosecute a person for selling a recording if the true name of the manufacturer is not on the product. Federal courts have held that these types of statutes (e.g., G.S. 14-435) have a consumer protection function; consequently, this type of statute is not preempted by federal copyright law.

BACKGROUND: Last Session, a similar bill (SB 1123) received a favorable report from this Committee, passed the Senate, and received a favorable report from House Judiciary III. The bill was not voted on by the House before *sine die* adjournment.

BILL ANALYSIS:

Section 1 would amend G.S. 14-432 by reorganizing the definitions and adding a new term -"fixed" – that would be defined using the definition from federal copyright law.

Section 2 would amend G.S. 14-433 to clarify that Internet service providers who are only providing third parties with a means of delivery, or conduit, for the transfer of recordings are not "using, or causing the use of" recordings that might be transferred in violation of the Article.

Section 3 would amend G.S. 14-435 to require additional information to be displayed on the packaging of recordings. The statute is not preempted by federal copyright law.

Section 4 would amend G.S. 14-436 by substituting "Article" for "Chapter."

Section 5 would rewrite G.S. 14-337(a) to reduce the number of "articles" involved to charge a Class I felony. The number of articles involved to qualify the offense as a Class 1 misdemeanor would also be changed. The term "article" includes both sound recordings and audio-visual works. The changes would clarify, for example, that it is not the number of individual recordings on a compact disc (the tangible medium) that are counted to determine the classification of the offense; it is the number of compact discs (the "articles" to be counted).

Section 6: The act is effective December 1, 2003, and applies to offenses committed on or after that date.

[OVER FOR PENALTY COMPARISON]

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB 42 2nd Edition

SHORT TITLE: Criminal Unauthorized Recordings

SPONSOR(S): Representatives Goodwin, Hall, Moore, & Stiller

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
Judicial					
Recurring	Unable to determine exact amount; no substantial impact anticipated.				
Nonrecurring					
TOTAL EXPENDITURES:	Unable to determine exact amount; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Unable to determine exact number of beds; no substantial impact anticipated				
POSITIONS: (cumulative)	Unable to determine exact amount; additional positions not anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE:

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY[1]: HB 42 clarifies the statutory provisions that prohibit the transfer of a copyrighted work to another medium, the recording of a live performance, and the manufacture and distribution of unlawfully transferred recordings. The bill amends current G.S. 14-137 (a) to reduce the number of "articles" involved to qualify the offense as a Class I felony and to reduce the number of articles to qualify the offense as a Class 1 misdemeanor. Violations of Article 58 (Records, Tapes, and Other Recorded Devices) are a Class 1 misdemeanor except in cases where (1) The offense involves at least 100 unauthorized articles during any 180-day period, or (2) a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period. These exceptions are punishable as a Class I felony.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Data on the number of offenders convicted during FY 2001-2002 under G.S. 14-137(a) are not available because the Administrative Office of the Courts does not have a specific offense code for these offenses. The lack of an AOC offense code is some indication that these offenses are infrequently charged and/or infrequently result in convictions. Therefore, it is not known how many offenders the bill might affect.

In regards to Section 2 of the bill, it is not known how many additional convictions may result from the proposed expansion of the statute to cover "live performances" which is subject to a Class 1 misdemeanor under the bill. In addition, because Section 3 of the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced for this proposed offense. In FY 2001-2002, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences of which the average estimated time served was 35.2 days. While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails but paid for by the State at a cost of $18/day. Because offenders serving active sentences of 90 days or less are housed in county jails, additional Class 1 misdemeanors are not expected to have a significant impact on the prison population.

Section 5 of the bill rewrites G.S. 14-337(a) to reduce the number of articles involved to qualify the offense as a Class I felony and to reduce the number of articles involved to qualify the offense as a Class 1 misdemeanor. The North Carolina Sentencing Commission does not expect a significant

[1] North Carolina General Assembly Research Division.

impact on the prison population from the reclassification of a Class 2 misdemeanor offense to a Class 1 misdemeanor offense. However, it does anticipate a slight impact on prison beds as a result of the reclassification of a Class 1 misdemeanor to a Class I felony. If, for example, there were 10 convictions that moved from a Class 1 misdemeanor to a Class 1 felony, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

HB 42 enhances punishment under G.S. 14-137(a) by reducing the number of offense categories to two—Class I felony and Class 1 misdemeanor—and by reducing the numeric threshold for the numbers of recordings that trigger more serious punishment. Thus, some cases that are now Class 1 misdemeanors would become Class I felonies and some Class 2 misdemeanors would become Class 1 misdemeanors under the bill. AOC is currently unable to estimate the number of defendants currently charged with offenses under the bill, as it does not have offense codes for most of the offenses in Article 58. For the one offense for which there is presently an offense code, data reveal that no defendants were charged during calendar year 2002. Because the bill reduces the numeric threshold for the number of recordings that trigger more serious punishment, court costs may slightly increase. For offenses that are brought to trial as Class I felonies, the estimated court cost per trial is $4,602. For Class I felony offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $220. For offenses that are brought to trial as a Level 1 misdemeanor, the estimated court cost per trial is $2,248. For Level 1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $177.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

Nicole Kreiser

PREPARED BY: Nicole Kreiser
and

Douglas Holbrook, Jr.

Douglas H. Holbrook Jr.

APPROVED BY: James D. Johnson, Director Fiscal Research Division

James D. Johnson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 42

Short Title:	Criminal Unauthorized Recordings.	(Public)
Sponsors:	Representatives Goodwin, Hall, Moore, and Stiller (Primary Sponsors).	
Referred to:	Judiciary II.	

February 20, 2003

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~The following definitions apply in this Article:

(1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or

both, that are being transmitted, is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for ~~such~~ these purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, ~~such~~ the article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any ~~such~~ article for profit, or possess for ~~such~~ those purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434~~,G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting ~~therefrom~~ from the violation, including actual, compensatory and incidental damages."

SECTION 5. G. S. 14-437(a) reads as rewritten:

"(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony, with a maximum fine of one hundred fifty thousand dollars ($150,000), if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a second or subsequent conviction for an act in violation of this Article.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the

effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

H 1

HOUSE BILL 952

Short Title: Clarifying Change/Family Law Arbitration Act. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE A CLARIFYING CHANGE TO THE LAWS RELATING TO THE CONFIRMATION OF AN ARBITRATION AWARD UNDER THE FAMILY LAW ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-53 reads as rewritten:

"**§ 50-53. Confirmation of award.**

~~Upon~~ Unless the parties agree otherwise, upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 952:
Clarifying Change/Family Law Arbitration Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	May 13, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 952 would allow parties who participate in family law arbitration to agree not to have the final award confirmed by the court.***

CURRENT LAW: The Family Law Arbitration Act requires the court to confirm, upon either party's application, the final award of the arbitrator. The effect of this is to make the award a court order.

BILL ANALYSIS: House Bill 952 would amend G.S. 50-53 to allow the parties involved in a family law arbitration to agree that they do not wish to have the arbitrator's award confirmed by the court. This would allow parties to agree that they wish the award to remain a contract and therefore capable of being modified as a contract and enforceable under contract law, rather than a court order.

This summary was substantially contributed to by Susan Sitze, Counsel to the House Judiciary I Committee.

H952-SMRU-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 65
Committee Substitute Favorable 3/26/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H65-CSRO-19 [v.2]

5/12/2003 11:32:13 AM

Short Title: Autopsy Photos Not Public Record. (Public)

Sponsors:

Referred to:

February 24, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report including any findings and interpretations prepared in accordance with G.S. 130A-389(a) is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge.A~~ Subject to the limitations of G.S. 130A-389.1

relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings, but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class I felony.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class I felony, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes or copies an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class H felony."

SECTION 4. This act becomes effective July 1, 2003, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB 65 2nd Edition

SHORT TITLE: Autopsy Photos Not Public Record

SPONSOR(S): Representative Ray

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring		Unable to determine exact amount.			
Judicial					
Recurring		Unable to determine exact amount.			
TOTAL EXPENDITURES:		Unable to determine exact amount.			
ADDITIONAL PRISON BEDS*	Unable to determine exact amount; no significant impact anticipated.				
POSITIONS: (cumulative)	Unable to determine exact amount; no additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch

EFFECTIVE DATE: December 1, 2003

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: HB 65 creates a special exemption from the Public Records Law for photographs and video or audio recordings of an autopsy. The bill also amends Chapter 132 of the General Statutes by adding a new section, which provides that any person may inspect or examine photographs or video or audio recordings of an autopsy at reasonable times and under reasonable supervision of the custodian. The custodian of the record is prohibited from providing copies of the record to the public, except as otherwise provided.

Two broad categories of groups are allowed to access autopsy records under the bill: (1) public officials (chief medical examiner, investigating medical examiner, district attorney, superior court judge, and law enforcement officers conducting an investigation) and (2) personal representatives of the estate of the deceased; a person authorized by order issued in a special proceeding; and a medical examiner, coroner, physician, or their designee who uses the material for teaching, training, or academic purposes.

HB 65 clarifies the procedure through which a person can access autopsy records, and makes conforming changes to notice requirements. New G.S. 130A-389.1(d) provides that a person who is denied access to copies of an autopsy record or who is restricted in their use may commence a special proceeding pursuant to Article 33, Chapter 1 of the General Statues. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose such record, and may prescribe any restrictions or stipulations that the clerk deems appropriate. Appeals may be made to the Superior Court pursuant to Article 27A, Chapter 1 governing appeals and transfers from the clerk. The bill does not apply to civil proceedings.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Because the proposed bill creates two new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of HB 65 on the prison population. It is not known how many offenders might be sentenced for Class I and Class H felony convictions. If, for example, there were ten Class I convictions for violations of disclosing autopsy records in violation of G.S. 130A-389.1(g), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2000-2001, 9 percent of Class I felony offenders were sentenced to active sentences, 37 percent were sentenced to intermediate sanctions, and 54

percent were sentenced to community punishment. On average, offenders served between seven and nine months.

Furthermore, if there were three Class H felony convictions for removal and copying of an autopsy record with the intent to steal the record in violation of G.S. 130A-389.1(h), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Class H felons serve active prison sentences, receive intermediate sanctions, and may receive community punishment if they fall in Prior Record Level I. In 2000-2001, 33 percent of Class H felony offenders were sentenced to active sentences, 51 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between nine and twelve months.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because the bill provides for a new Class I and Class H felony offense, AOC is unable to estimate the number of new charges that may result from this bill. For Class I felony offenses that are brought to trial, the estimated court cost per trial is $4,637. For Class I offenses not brought to trial and where a guilty plea is entered, AOC estimates the cost per guilty plea at $255. For Class H felony offenses that are brought to trial, the estimated court cost per trial is $5,012. For Class H felony offenses not brought to trial and where a guilty plea is entered, AOC estimates the cost per guilty plea at $283. It is unlikely that many trials and pleas would occur as a result of this bill.

AOC also estimates that HB 65 would have an impact on the clerk's workload resulting from the special proceedings commenced to access autopsy records. However, there is no data available to estimate the number of such proceedings. Furthermore, AOC anticipates that since HB 65 does not apply to civil, criminal, or administrative proceedings, the autopsy records introduced into evidence would become public records via the trial record and that clerks would not incur additional workload in carrying out measures to keep such records confidential. However, to the extent that the bill may lead to a large number of motions in criminal cases for orders restricting or controlling disclosure of an autopsy report, there may be an additional time and cost to the court, prosecution, and defense.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser

and

Douglas R. Holbrook, Jr.

APPROVED BY: James D. Johnson, Director Fiscal Research Division

DATE: March 28, 2003

passed a ballot proposal last year that requires a two-thirds vote in the legislature to remove items from the state's public-records law.

"The public was so enraged (at the legislature's action) ... that the public reacted with a 73 percent margin in November," Bussian said.

• David Rice can be reached in Raleigh at (919) 833-9056 or at drice@wsjournal.com

Dale Earnhardt autopsy photos to stay private

A circuit judge says the harm that may come to the driver's wife, Teresa Earnhardt, is sufficient reason.

By KEVIN KELLY

© St. Petersburg Times,
published June 14, 2001

DAYTONA BEACH -- Siding with the widow of race-car driver Dale Earnhardt, a circuit judge ruled Wednesday that autopsy photos of the NASCAR legend should remain private.

"The harm which could come to Mrs. Earnhardt alone is sufficient under the testimony in this particular case," Judge Joseph Will said. "The court considers the seriousness of the invasion to be of the highest degree.

"It's unspeakable and doesn't really require further factual definition to satisfy this court," he said. "An invasion of this kind does not cut deeper."

Surrounded by her lawyers, Teresa Earnhardt, 42, sat expressionless as the judge read his decision after a 75-minute recess.

Mrs. Earnhardt, who filed a lawsuit four days after her husband died to stop the release of the photos, left the courtroom without speaking to reporters.

"She seem to be pleased," said Thom Rumberger, a lawyer for Mrs. Earnhardt. "I got a little squeeze on the hand. . . . She's going about her business now. Hopefully, at least for a while, this will kind of simmer down."

That isn't likely.

Attorneys for the Independent Florida Alligator, a student-run newspaper at the University of Florida, and a Deland-based Web site vowed immediately to seek a new trial and, if that is denied, to appeal to the Florida Supreme Court the constitutionality of a new law that protects the release of autopsy photos.

The Alligator and Michael Uribe, who operates websitecity.com, sought the photographs to explore the validity of investigations performed by the Volusia County medical examiner and Daytona Beach Police Department and to help prevent further deaths in NASCAR.

"This ruling denies the public access to important information that could protect, in this case, other drivers from the same type of injury that occurred here," Alligator attorney Tom Julin said.

Dale Earnhardt, a seven-time Winston Cup champion, was the fourth NASCAR driver to die of a basal skull fracture since May 2000.

NASCAR, along with Dr. Steve Bohannon, director of emergency medical services at Daytona International Speedway, held a news conference five days after his accident to announce a broken left lap belt might have contributed to the driver's death on Feb. 18.

"We want to know what happened," Julin said. "We want to know what was the (cause) of death, what killed Dale Earnhardt and whether NASCAR was covering up that cause.

"These autopsy photographs could offer important information about that. We still need to see them and that's why we're going to continue."

Mrs. Earnhardt testified for an hour and 45 minutes Tuesday, saying no one should be allowed to view the photos, particularly on the Internet, because of their disturbing nature.

"The photos are humiliating, disgusting and negative," she said. "They could be nothing but harmful and painful to my family, my company, our fans . . . anybody."

Uribe recently published the autopsy photos of NASCAR drivers Rodney Orr and Neil Bonnett on his Web site. Relatives of the two drivers testified Tuesday as to the grief caused by Uribe's action.

"My personal beliefs on all this, no matter what, is that these records should be available to the public with unfettered access," he said. "That got me into this ballgame."

Will's judgment was the second favorable ruling for Mrs. Earnhardt during the three-day hearing.

He ruled Monday that the Family Protection Act passed by the Legislature in March was a valid and constitutional exercise. The law made it a felony to release autopsy photos without a judge's approval.

"I think our strongest argument is attacking the statute because it's got a lot of defects in it," Julin said. "It's overbroad."

Attorneys for Mrs. Earnhardt asked Will to issue a permanent injunction to keep the photos sealed.

"There is a Legislature," Volusia County attorney Dan Eckert stated, "and we are not it."

Will said it would be inappropriate for a circuit judge to rule on such a request, given the new law. Therefore, lawyers for Mrs. Earnhardt are prepared for several more rounds of challenges.

"I don't think it brings closure," Rumberger said. "I think it's part closure. It's the start of something else we'll just deal with as the days and weeks and months and years go on."

Middle ground

Foundation proposes autopsy photo compromise

Posted: Saturday March 10, 2001 9:06 PM

Click here for more on this story



The proposed compromise would allow the public unlimited access to view the photos, but ban copying them. Robert Laberge/Allsport

HOUSE BILL 65:
Autopsy Photos Not Public Record.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Ray
Date:	May 13, 2003	**Summary by:**	William R. Gilkeson
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 65 would provide that photographs and video and audio recordings of official autopsies are not public records. The custodian of those photos and recordings would allow members of the general public to view them, but not to have copies. The text of an autopsy report, however, would continue to be a public record and fully accessible by the public. In addition, certain public officials and others could obtain copies for official use or other specialized use only. Persons who feel entitled to obtain copies of the photos could seek an order through a special proceeding before a clerk of court to obtain them. The bill makes the unauthorized disclosure of these documents a Class I felony and stealing the documents a Class H felony. Effective July 1, 2003, and applies to unauthorized disclosures made on or after that date.***

CURRENT LAW: In North Carolina, unlike in some other States, the right of public access to governmental records is not in the Constitution. That right is statutory only. But the statutory right is very broad: The Public Records statute, G.S. Chapter 132, defines a public record to include any "documentary material, regardless of physical form or characteristics, made or received by an agency of North Carolina government or its subdivisions in connection with the transaction of public business". The statute goes on to provide that "it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." The General Assembly has made several statutory exceptions to that broad statute. State Supreme Court has made clear that any exceptions to the public records statute will have to be made by the General Assembly – there will not be any court-created exceptions.

Under current law, autopsy reports, including photographs, video and audio recordings made in connection with the autopsy, fit into the G.S. 132-1's broad definition of public records.

In addition, the law that authorizes the medical examiner to conduct an official autopsy, also provides that a "copy of the report shall be furnished to other persons upon request." *G.S. 130A-389.* Official autopsies are those authorized by a medical examiner or requested by a district attorney or superior court judge. Private autopsies are those requested and paid for by a decedent's next-of-kin and become part of the decedent's medical records and therefore are not public records.

BILL ANALYSIS: House Bill 65 does the following:

- Exempts a photograph or video or audio recording from the definition of "public record." *Sec. 1.*
- Makes clear that the text of an autopsy report is still a public record and fully accessible by the public. *Sec. 1.*
- Gives any member of the public the right to view original photographs or recordings at reasonable times and under reasonable supervision, **but generally prohibits the custodian from furnishing copies.** *Sec. 3, in new G.S. 130A-389.1(a).*

- The following public officials may obtain copies for official use but may not disclose to the public except for the purpose of identifying the deceased:
  - The Chief Medical Examiner or designee
  - The investigating medical examiner
  - District attorney
  - Superior court judge
  - Law enforcement officials *Sec. 3, in new G.S. 130A-389.1(b).*
- After signing a statement acknowledging that they have received notice that unauthorized disclosure of autopsy recorded images is a crime, the following other persons may obtain copies but may not disclose to the public unless authorized by law;
  - Personal representative
  - A person authorized by court order
  - Another medical examiner or physician, or designee, for medical, scientific, purposes or for teaching or training purposes. *Sec. 3, in new G.S. 130A-389.1(c).*
- Authorizes a person who is denied access to copies to commence a special proceeding under Article 33 of Chapter 1. A special proceeding is a simplified and expedited judicial proceeding heard by the clerk of superior court. Currently, matters such as probate, adoption and guardianship are handled by special proceeding. In deciding whether to grant access, the clerk would be guided by "good cause" standards set out in the bill. A person aggrieved by the decision of the clerk may appeal to the superior court for a de novo review. *Sec. 3, in new G.S. 130A-389.1(d).* Petitioner must give notice to the decedent's personal representative, if any, and to the next-of-kin. *Subsection (e) of same section.*
- Provides that these restrictions do not apply to the use of autopsy photographs or video or audio recordings in criminal, civil or administrative proceedings. This provision allows autopsy photographs or video or audio recordings to be used as evidence in a criminal or civil trial or an administrative proceeding. Once these documents become part of a court record they become public records and cannot be exempted without violating the Constitution. However, in a specific case, the court or presiding officer may restrict the use of the recorded images. *Sec. 3, in new G.S. 130A-389.1(f).*
- Willfully and knowingly giving copies of autopsy photos or recordings to an unauthorized person is a Class I felony. *Sec. 3, in new G.S. 130A-389.1(g).*
- Willful and knowing removal or copying of the photographs or recordings with intent to steal is a Class H felony. *Sec. 3, in new G.S. 130A-389.1(h).*

Karen Cochrane-Brown, counsel to House Judiciary II, was the original author of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 126

Committee Substitute Favorable 3/10/03

Short Title: Evidence in Juvenile Hearings. (Public)

Sponsors:

Referred to:

February 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING EVIDENCE ADMISSIBLE IN CERTAIN JUVENILE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. Dispositional hearing.**

The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 2. G.S. 7B-906(c) reads as rewritten:

"(c) At every review hearing, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.
(3) Goals of the foster care placement and the appropriateness of the foster care plan.
(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.
(6) An appropriate visitation plan.
(7) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.
(8) When and if termination of parental rights should be considered.
(9) Any other criteria the court deems necessary."

SECTION 3. G.S. 7B-907(b) reads as rewritten:

"(b) At any permanency planning review, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
(6) Any other criteria the court deems necessary."

SECTION 4. G.S. 7B-908(a) reads as rewritten:

"(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."

SECTION 5. G.S. 7B-2501(a) reads as rewritten:

"(a) The dispositional hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 126:
Evidence in Juvenile Hearings

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Glazier, Moore
Date:	May 13, 2003	**Summary by:**	O. Walker Reagan,
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 126 would clarify the current practice in juvenile dispositional, review, and permanency planning hearings to permit the introduction of hearsay evidence in order to determine the needs of the juvenile and the most appropriate disposition.***

CURRENT LAW: Chapter 7B of the General Statutes, the Juvenile Code, contains the process and procedure for determining whether a juvenile has been abused, neglected, or is dependent (Subchapter I), and for determining whether a juvenile is undisciplined or delinquent (Subchapter II). This is known as "adjudication". Adjudication proceedings are formal court proceedings in which the rules of evidence strictly apply.

The Code also provides for the disposition of a juvenile's case who has been found (adjudicated) to have been abused or neglected, or to be dependent, undisciplined or delinquent. Dispositional hearings are informal. The purpose of dispositional hearings is to determine the appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. The Code also provides for review hearings for juveniles in nonsecure and secure custody to determine whether nonsecure or secure custody should continue.

Proceedings under Chapter 7B are civil proceedings, not criminal proceedings.

Generally, under the Rules of Evidence, a statement, other than one made by a person while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted is inadmissible as hearsay.

BILL ANALYSIS: House Bill 126 would make it clear that for dispositional, permanency planning, and review hearings, hearsay evidence would be admissible so long as the court finds the evidence to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. For example, a DSS worker could testify (and the court could consider) what someone told the worker in an interview, if the court found the worker's testimony otherwise meets the criteria (relevant, reliable, necessary).

BACKGROUND: In a 2001 case *(In re Dula,* 143 NC App 16 (2001)) concerning an abused juvenile who had been placed outside the home (nonsecure custody), the Court of Appeals noted that certain evidence offered in the permanency planning hearing should not be considered by the trial court on remand because it is hearsay. This "note" by the court raised concern from DSS attorneys and district court judges, who had been operating under the assumption that "informal" as provided in the statutes meant that attorneys could present, and judges could consider, hearsay evidence in dispositional, permanency planning, and review proceedings.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

This summary was substantially contributed to by Dianna Jessup, Counsel to the House Judiciary IV Committee.

H126-SMRU-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 842

Committee Substitute Favorable 4/7/03
Third Edition Engrossed 4/22/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H842-CSRR-26 [v.4]

5/12/2003 7:53:49 PM

Short Title: Help America Vote Act Compliance. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SYSTEM FOR ALL NORTH CAROLINA ELECTIONS THAT COMPLIES WITH THE HELP AMERICA VOTE ACT AND TO HELP PREVENT DUPLICATE NAMES ON JURY LISTS..

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.

SECTION 2. G.S. 163-82.10(a) reads as rewritten:

"(a) ~~Application Form Becomes~~ Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application ~~form~~ form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the

official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of ~~the official~~ any paper hard copy registration records of ~~all~~ voters in the county and shall keep them in a place where they are secure."

SECTION 3. G.S. 163-82.10 is amended by adding a new section to read:

"(a1) Paperless, Instant Electronic Transfer. – The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document."

SECTION 4. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

SECTION 5. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security

number if the agency has those items because they are on a voter registration document."

SECTION 6. G.S. 163-82.11 reads as rewritten:

"**§ 163-82.11. Establishment of statewide computerized voter registration.**

(a) Statewide System as Official List. – The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. – The State Board of Elections shall develop and implement the system so that each county board of elections ~~can:~~ can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another ~~county;~~ county.

(2) Be notified automatically that a registered voter in its county has registered to vote in another ~~county; and~~ county.

(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. – Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its ~~own computer file of registered voters~~ records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall ~~transmit~~ enter through the computer ~~network~~ system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer ~~file.~~ system. ~~The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.~~

(e) Voter Registration List to County Jury Commissions. – The State Board of Elections shall make available, upon request, to the county jury commission of each county the voter registration list of that county. Included in the information furnished to the county jury commission under this subsection should be the drivers license number of each registered voter if it is available. The list provided to the jury commission shall have been matched with that of the Division of Motor Vehicles to eliminate duplicates."

SECTION 7.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of ~~rules~~ guidelines relating to computerized voter registration.**

The State Board of Elections shall make all ~~rules~~ guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These ~~rules~~ guidelines shall include provisions ~~for:~~ for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration ~~file;~~ file.

(2) Linking the central file through a network with computerized voter registration files in each of the ~~counties;~~ counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration ~~applications;~~applications.

(4) Protecting and securing the ~~data; and~~ data.

(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.

(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.

(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.

(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.

(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.

(10) Enabling the statewide system to provide upon request to the jury commission of each county a list of the registered voters of that county, with the drivers license of the voter if available, and with the list having been matched with that of the Division of Motor Vehicles to eliminate duplicates.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board."

SECTION 7.(b) G.S. 163-82.19 reads as rewritten:

"**§ 163-82.19. Voter registration at drivers license ~~offices.~~ offices; coordination on data interface.**

(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or

correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate ~~county~~ board of elections.

(b) Coordination on Data Interface. – The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002. The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002."

SECTION 7.(c) G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that ~~he~~ the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the

following year, and licensed to drive a motor vehicle ~~as of July 1, 1983, and~~ as of July 1 of each ~~biennium thereafter,~~ odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been canceled. The list shall contain the address and zip code of each driver, plus ~~his~~ the driver's date of ~~birth and~~ birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. The list so provided shall be used solely for jury selection and election record purposes and no other. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 7.(d) G.S. 9-2 reads as rewritten:

"**§ 9-2. Preparation of jury list; sources of names.**

(a) It shall be the duty of the jury commission ~~beginning July 1, 1981, (and each biennium thereafter)~~ on July 1 of every odd-numbered year to prepare a list of prospective jurors qualified under this Chapter to serve in the biennium beginning ~~January 1, 1982, (and each biennium thereafter).~~ on January 1 of the next year. Instead of providing a list for an entire biennium, the commission may prepare a list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the list, the jury commission shall use the State voter registration ~~records of~~ list for the county. The commission may use fewer than all the names from the voter list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c) ~~Effective July 1, 1983, the~~ The list of licensed drivers residing in each county, as supplied to the county by the Division of Motor Vehicles pursuant to G.S. 20-43.4, shall also be required as a source of names for use by the commission in preparing the jury list. The Division of Motor Vehicles shall match its list with that of the State Board of Elections to avoid duplicates pursuant to G.S. 20-43.4 before providing its list to the jury commission.

(d) When more than one source is used to prepare the jury list the jury commission shall take randomly a sample of names from the list of registered voters and each additional source used. The same percentage of names must be selected from each list. The names selected from the voter registration list shall be compared with the entire list of names, from the second source. Duplicate names shall be removed from the voter registration sample, and the remaining names shall then be combined with the sample of names selected from the second source to form the jury list. If more than two source lists are used, the same procedure must be used to remove duplicates.

(e) As an alternative to the procedure set forth in subsection (d), the jury commission may merge the entire list of names of each source used, remove the duplicate names, and randomly select the desired number of names to form the jury list.

(f) The jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous year but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the jury list.

(g) The ~~custodian of the appropriate election registration records in each county~~ State Board of Elections shall cooperate with the jury commission in its duty of compiling the list required by this section. The State Board of Elections shall match its list with that of the Division of Motor Vehicles to avoid duplicates pursuant to Article 7A of Chapter 163 of the General Statutes before providing its list to the jury commission. Nothing in this section authorizes the disclosure of addresses required to be kept confidential by G.S. 163-82.10(d).

(h) As used in this section 'random' or 'randomly' refers to a method of selection that results in each name on a list having an equal opportunity to be selected."

SECTION 8. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.7A. Voter education and information.**

(a) Posting The Information. – For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163-165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. – The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002."

SECTION 9. G.S. 163-82.4 reads as rewritten:

"**§ 163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number, or, if the applicant does not have a drivers license number the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement 'If you checked "no" in response to either of these questions, do not complete this form'.

If the voter fails to check the box set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election."

SECTION 10. G.S. 163-82.10A reads as rewritten:

"**§ 163-82.10A. Permanent voter registration numbers.**

~~Each county board of elections~~ The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections."

SECTION 11. G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines,

information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002, with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

(1) Types, makes, and models of voting systems approved for use in this State.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination of voting systems before use in an election.
(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 12. G.S. 163-165.4A reads as rewritten:

"**§ 163-165.4A. ~~Punch-Card ballots.~~Punch-card ballots and lever machines.**

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A 'lever machine voting system' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment."

SECTION 13. G.S. 163-182.1 reads as rewritten:

"**§ 163-182.1. Principles and rules for counting official ballots.**

(a) General Principles That Shall Apply. – The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in

that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

~~(b) Rules and Directions by State Board of Elections. The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.~~

(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

(1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

(2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

(3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 14. G.S. 163-166.01 reads as rewritten:

"**§ 163-166.01. Hours for voting.**

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

SECTION 14.1. G.S. 163-166.7 reads as rewritten:

"**§ 163-166.7. Voting procedures.**

(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If the chief judge states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. – If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.
(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.
(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.
(5) Voters leave the voting place promptly after voting.
(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.
(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.
(8) The registration records are kept secure.
(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.
(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.
(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election.
(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security,

confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 16. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:
a. A copy of a current and valid photo identification.
b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.
(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.
(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.
(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.
(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 17.(a) Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 8A.
"HAVA Administrative Complaint Procedure.

"**§ 163-91. Complaint Procedure.**

(a) The Board shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the Board is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the Board shall complete all of the following:
(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.
(2) Accept oral and written comments on the proposed complaint procedure.
(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."

SECTION 17.(b) G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(c) Full Exemptions. – This Chapter applies to every agency except:
...

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes."

SECTION 18. G.S. 163-256 reads as rewritten:

"**§ 163-256. Regulations of State Board of Elections.**

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of ~~G.S. 150B-9.~~ Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials."

SECTION 19. G.S. 163-245 reads as rewritten:

"**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited

on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 20. G.S. 163-247(3) reads as rewritten:

"(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, ~~held during the calendar year the application was received.~~ held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election."

SECTION 21. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.27. Help America Vote Act of 2002.**

As used in this Chapter, the term the 'Help America Vote Act of 2002' means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002."

SECTION 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.

HOUSE BILL 842:
Help America Vote Act Compliance.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Michaux and Stam
Date:	May 13, 2003	**Summary by:**	William R. Gilkeson
Version:	H842-CSRR-26[v.4]		Committee Co-Counsel

SUMMARY: This PCS for House Bill 842 is designed to comply with six provisions of the Help America Vote Act of 2002. HAVA requires that all States comply with these provisions regardless of whether they receive federal money. But HAVA's mandate only applies to federal elections. The bill essentially says to the State Board of Elections and other agencies: "Change North Carolina's election system to comply with HAVA, but make that system apply to all elections in NC, not just federal elections."

The requirements of HAVA deal with the following topics:

1. ***Statewide voter registration system.*** *Sec. 303(a) of HAVA.*
2. ***Standards for voting equipment.*** *Sec. 301 of HAVA.*
3. ***Provisional voting.*** *Sec. 302 of HAVA.*
4. ***I.D. for certain 1st time voters who register by mail.*** *Sec. 303(b) of HAVA.*
5. ***Administrative complaint procedure.*** *Sec. 402 of HAVA.*
6. ***Uniformed and Overseas Absentee Voters.*** *Title VII of HAVA.*

In addition, HB 842 contains 6 provisions not required by HAVA:

1. ***Paperless voter registration using electronically captured signatures.*** *Sections 3 & 4 of the bill.*
2. ***Exemption of drivers license number, social security number, and signature from public records law if on voter registration form.*** *Section 5 of the bill.*
3. ***State Board of Elections's duty to update its statewide voter registration list to reflect felons restored to citizenship after completing their sentences.*** *Section 6 of the bill.*
4. ***A phase-out by 2006 of lever machines.*** *Section 12 of the bill.* ***(HAVA provides funding for their replacement, but does not mandate their phase-out. HAVA also provides funding for phasing out punch-card equipment: N.C. decided in 2001 to phase out punch-cards.)***
5. ***A requirement that all voters sign a pollbook or other document before voting.*** *Section 14.1 of the bill.*
6. ***Provisions to provide the county jury commissions with the benefit of names that have been subjected to the computer matching process between the State Board of Elections and the DMV.*** *Secs. 6, 7.(a), 7.(c), and 7.(d).*

Statewide voter registration system

(Sections of the bill dealing with)

Sec. 2. – Makes the statewide VR system the official list for conduct of all elections. County paper document is a backup to statewide list. *(to comply with Sec. 303 of HAVA.)* Continues to require re-registration if move to another NC county. *Effective 1-1-04.*

Sec. 3 – **VR application may be paperless.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 4 – **Electronically captured signature of VR applicant suffices for signature requirement.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 5 – **Exempts DL # or SS # or signature from public records law if on VR application.** *(not to comply with HAVA but to prevent unintended consequences of loss of privacy.) Effective when it becomes law.*

Sec. 6 – Defining role of State Board and of county boards in maintaining VR. Requires State Board to update list to comply with HAVA. *(to comply with Sec. 303 of HAVA.)* **This section also does something not required by HAVA: It requires the State Board to update the statewide list to reflect the restoration of citizenship rights to ex-felons.** *Effective 1-1-04.*

Sec. 7(a) – Directs State Board to adopt guidelines for administering statewide VR system. *(to comply with Sec. 303 of HAVA.)* Exempts those guidelines from NC APA. *Effective 1-1-04.*

Sec. 7(b) – Directs DOT to coordinate with State Board in computer match-up of DMV and VR names. Requires DOT to enter into similar pact with U.S. Commissioner of Social Security. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Sec. 9 – Changes contents of the voter registration form. Adds DL # and SS #. Requires State Board issuance of unique identifier # if no DL or SS has been issued. Adds the verbatim citizenship and age questions required by HAVA. *(to comply with Sec. 303 of HAVA. Effective 1-1-04.*

Sec. 10 – Requires assignment of unique identifier to everyone. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Standards for voting equipment

(Sections of the bill dealing with)

Sec. 11 – Expands State Board's authority over approval and disapproval of voting systems, requires it to make those systems comply with HAVA. *(to comply with Sec. 301 of HAVA.) Effective 1-1-06.*

Sec. 12 – Amends the section enacted in 2001 that prohibited punchcards and gave current users till 2006 to get rid of them. **Adds lever machines to this abolition.** *(not an absolute requirement of HAVA, but logical if State accepts early-out HAVA money to replace punchcards and lever machines.) Effective when it becomes law.*

Sec. 13 -- Amends the vote-counting statute to require the SBOE to adopt procedures and standards for voting systems, including defining what is a vote and what will be counted as a vote on every voting system used in the State. *(to comply with Sec. 301 of HAVA.)* Exemption from NC APA. The bill specifies that optical scan systems must return an overvoted ballot to the voter for correction before the vote is accepted and counted. *Effective 1-1-06.*

Provisional Voting

(Sections of the bill dealing with)

Sec. 8. – Requires that certain HAVA-required information, including how to vote provisionally, be posted at voting place. *(to comply with Sec. 302(b) of HAVA.) Effective 1-1-04.*

Sec. 14 – If voting hours extended by court order, afterhours voters must vote by provisional ballot. *(to comply with Sec. 302 of HAVA.) Effective 1-1-04.*

Sec. 15 –Provisional voting omnibus section. Includes the right-to-know provision of HAVA, giving provisional voter a confidential, cost-free means of finding out whether the vote was counted and if not, why not. *(to comply with Sec. 301 of HAVA.) Effective 1-1-04.*

I.D. requirement for certain 1st time voters

(Section of the bill dealing with)

Sec. 16 – I.D. requirement for voters who registered by mail after 1-1-03 and are casting their first federal vote in NC and didn't put DL or SS # on VR form. *(to comply with Sec. 301(b) of HAVA.) Effective 1-1-04.*

Administrative Complaint Procedure

(Section of the bill dealing with)

Sec. 17 – Complaint procedure to remedy grievances for violation of HAVA. *(to comply with Sec. 402 of HAVA.)* The draft basically delegates to the State Board the creation of a complaint procedure to comply with HAVA.. It exempts the procedure from the APA. HAVA says the procedure must be open to any person who believes there's been a violation of HAVA, must be finally decided within 90 days unless complainant agrees to an extension, and must provide alternative dispute resolution if the normal means don't yield a result in 90 days. *Effective 1-1-04.*

Uniformed and Overseas Absentee Voting

(Sections of the bill dealing with)

Sec. 18 – Makes SBOE single office for info about uniformed and overseas voters. *(to comply with Sec. 702 of HAVA) Effective when it becomes law.*

Sec. 19 – Makes changes to UO voters provision, including removal of any start date for application. *(to comply with Sec. 706 of HAVA) Effective 1-1-04.*

Sec. 20 – Extends validity of UO absentee application through two general elections. *(to comply with Sec. 704 of HAVA) Effective 1-1-04.*

Signature requirement for all voters

(Section of the bill dealing with)

Sec. 14.1 – In a provision not required by HAVA, the House added a requirement that all voters must sign the pollbook, other voting record, or voter authorization document before voting. If the voter is unable to sign, a precinct official shall enter the voters name on the proper document before the voter votes. *(Not required by HAVA.)* ***Effective 1-1-04.***

Benefits of computer-matching names for jury commissions

(Sections of the bill dealing with)

Sec. 6, 7.(a), (c), & (d)– Requires both State Board of Elections and DMV to provide lists to county jury commissions, both after they have done their computer matches with each other. *(Not required by HAVA.)* **Requires Board of Elections and jury commissions to keep personal information from drivers license records confidential.** ***Effective 1-1-04.***

HAVA

The Help America Vote Act of 2002

William R. Gilkeson, Counsel, House Committee on Election Laws and Campaign Finance Reform.
March 18, 2003

Enacted in response to the flaws exposed in the American election system in the 2000 Presidential election, especially in Florida, where the closeness of the election held the flaws up to the light for everyone to see.

The bill was passed last fall by a Republican-controlled House and a Democratic-controlled Senate, so it is a bipartisan bill filled with bipartisan compromises. Some of the compromises were hard to arrive at, and that's one of the reasons the bill being is so hard to read. Unlike with much congressional legislation, there is no committee report that explains the intent behind HAVA. When asked why not, a congressional staff attorney who worked on the bill said the conferees on the bill were barely able to agree upon the wording of the bill – they would never have been able to agree on a statement of what it meant!

The bill provides a lot of money to the States. And it makes several important requirements of the States. The requirements apply only to elections for federal office. Most States, presumably, would not want to have one system for federal elections and a separate system for State and local elections, so legislation by the General Assembly will be required to enact the changes so N.C. will have a uniform system compliant with HAVA.

HAVA contains two pots of money for the States.

- The first pot, called "early out money," will be granted to States according to a formula based on population. All receipt of that money requires is an act of the Governor requesting the money. North Carolina gets in the neighborhood of $9 million. No State match is required. That money, if accepted by the State, must be used to replace punchcard and lever machine voting equipment. N.C. has seven counties that still use punchcards, including Forsyth and Cabarrus, and four that still use lever machines. If there is some of the $9 million left over, that can be used for a number of other purposes that are listed on P. 5 of the bill. Title I of HAVA.
- The second pot of money, the much bigger pot, is called "requirements money," and it is to be used to help bring the State into compliance with HAVA's requirements. According to the original authorization in HAVA North Carolina would have received some $83 million of requirements money over a period of three fiscal years. According to President Bush's

recommended budget, however, the money would be much less than that -- closer to $50 million over the three years. The requirements money requires a 5% State match for each year. It also requires the State to maintain its level of funding. The chief state election official (Gary Bartlett) is required to submit a State Plan by this September describing how NC will spend the money. Title II of HAVA.

The State must set up an Election Fund in which to administer grants received. § 254 of HAVA.

Now for the Requirements. They are contained in Title III of HAVA. They are basically in six categories:

1. **Statewide Voter Registration System** --- § 303 of HAVA.

- Must comply by 1-1-04.
- NC also has head start.
- Must have single, computerized, official list.
- Must have unique identifier for every voter in the State.
- All county VR information must go into the Big List on an "expedited basis" – means 24 hours.
- Must be coordinated with other agency databases in the State.
- List maintenance must be done through the Big List.
- State must not "accept or process" a VR application unless the voter provides their current and valid DL # if they have one, and if they don't have a DL #, the last 4 digits of their SS #, and if they don't have either, State must provide a unique I.D. # for them.
- State must put certain citizenship and age question verbatim on its VR form.
- State must use computerized lists from DMV, CSS to verify validity of the numbers.

2. **Standards for Voting Equipment** --- § 301 of HAVA.

- Must comply by 1-1-06.
- All voting equipment must allow voter to independently and privately verify how they voted.
- Must allow voter to independently and privately correct their vote.
- If voter overvoted, must tell the voter they overvoted and what that means, and give them an opportunity to correct that. For punchcard, paper ballots, or central count systems, this can be satisfied by having an educational program and providing instructions to the voter in the polling place.

- Audit capacity: (Relevant to DREs). Permanent paper record with manual audit capacity, voter has opportunity to correct before paper is produced, paper record shall be available as official record for a recount.
- Accessibility for disabled. Must have one DRE machine in each precinct where disabled, including blind, can vote with the same privacy and independence as other voters. Means recording with earphones.

3. Provisional Voting --- § 302 of HAVA.

- Must comply by 1-1-04.
- NC ahead of many States in that we already have provisional voting.
- Must allow anyone who shows up at polls and claims to be eligible to vote there to vote there.
- Must provide a toll-free, private way for voter to find out whether their provisional vote was cast, and if it wasn't, why it wasn't. Must notify any provisional voter of that right.
- If any voter votes after the regular poll hours because of a court order extending those hours, they vote provisionally.
- Information must be posted in the voting place:
    1. Sample ballot.
    2. Poll opening and closing hours.
    3. Instructions on how to vote, including provisionally.
    4. Instructions for first-time voters who must present an I.D.
    5. Information on State and federal laws on voting rights.
    6. Information on State and federal laws against fraud and misrepresentation.

4. I.D. Requirements for First Time Voters Who Register by Mail --- § 303 of HAVA.

- Must comply by 1-1-03.
- Any voter who is voting in their first federal election in the State who has registered by mail on or after 1-1-03, must provide an I.D. before voting in person or absentee . . .
- . . . unless the voter provided a D.L. # or SS # on the registration form or mailed in with the registration form one of the I.D.s. Also exempted from I.D. if they can vote absentee under UOCAVA or VAEHA.
- For absentee voting, you mail the I.D. in with the ballot.
- The I.D. can be either a current and valid photo identification (HAVA doesn't say what kind) or a current utility bill, bank statement, paycheck or other govt document that shows the name and address of the voter.
- If don't have the I.D., can vote provisionally.

5. Administrative Complaint Procedure --- § 402 of HAVA.

- Must be open to any person who believes there has been a violation of HAVA.
- Must be finally decided within 90 days unless complainant agrees to an extension.
- Must provide an alternative dispute resolution if the normal procedure doesn't yield a result in 90 days.

6. Uniformed and Overseas Absentee Voters --- § Title VII of HAVA

- Requires a single office in the State for information about uniformed and overseas voting.
- No absentee application from uniformed or overseas voter may be rejected for being submitted too early.
- One application for uniformed or overseas voting must be good 2 general elections.

HAVA creates a new federal agency, the Election Assistance Commission, which must adopt "voluntary guidelines" to help States comply. Title II of HAVA

The U.S. Attorney General, however, may bring a civil action against any State in U.S. District Court for declaratory or injunctive relief. USDOJ plans to issue statements about its views on the act. § 401 of HAVA.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 842

Short Title:	Help America Vote Act Compliance.	(Public)
Sponsors:	Representatives Michaux, Stam (Primary Sponsors); and Alexander.	
Referred to:	Election Law and Campaign Finance Reform.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SYSTEM FOR ALL NORTH CAROLINA ELECTIONS THAT COMPLIES WITH THE HELP AMERICA VOTE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.

SECTION 2. G.S. 163-82.10(a) reads as rewritten:

"(a) ~~Application Form Becomes~~ Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application ~~form~~ form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records

and subject to disclosure to the general public under Chapter 132 of the General Statutes. The county board of elections shall maintain custody of ~~the official~~ any paper hard copy registration records of ~~all~~ voters in the county and shall keep them in a place where they are secure."

SECTION 3. G.S. 163-82.10 is amended by adding a new section to read:

"(a1) Paperless, Instant Electronic Transfer. – The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document."

SECTION 4. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

SECTION 5. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document."

SECTION 6. G.S. 163-82.11 reads as rewritten:

"**§ 163-82.11. Establishment of statewide computerized voter registration.**

(a) Statewide System as Official List. – The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and

managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. – The State Board of Elections shall develop and implement the system so that each county board of elections ~~can:~~ can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another ~~county;~~ county.

(2) Be notified automatically that a registered voter in its county has registered to vote in another ~~county; and~~ county.

(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. – Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its ~~own computer file of registered voters~~ records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall ~~transmit~~ enter through the computer ~~network~~ system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer ~~file.~~ system. ~~The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.~~"

SECTION 7.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of ~~rules~~ guidelines relating to computerized voter registration.**

The State Board of Elections shall make all ~~rules~~ guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These ~~rules~~ guidelines shall include provisions ~~for:~~ for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration ~~file;~~ file.

(2) Linking the central file through a network with computerized voter registration files in each of the ~~counties;~~ counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration ~~applications;~~applications.

(4) Protecting and securing the ~~data; and~~ data.

(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.

(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.

(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.

(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.

(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board."

SECTION 7.(b) G.S. 163-82.19 reads as rewritten:

"**§ 163-82.19. Voter registration at drivers license ~~offices.~~ offices; coordination on data interface.**

(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate ~~county~~ board of elections.

(b) Coordination on Data Interface. – The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002."

SECTION 8. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.7A. Voter education and information.**

(a) Posting The Information. – For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163-165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. – The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002."

SECTION 9. G.S. 163-82.4 reads as rewritten:

"**§ 163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number, or, if the applicant does not have a drivers license number the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement 'If you checked "no" in response to either of these questions, do not complete this form'.

If the voter fails to check the box set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election."

SECTION 10. G.S. 163-82.10A reads as rewritten:

"**§ 163-82.10A. Permanent voter registration numbers.**

~~Each county board of elections~~ The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections."

SECTION 11. G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines,

information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002, with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

(1) Types, makes, and models of voting systems approved for use in this State.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination of voting systems before use in an election.
(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 12. G.S. 163-165.4A reads as rewritten:

"**§ 163-165.4A. ~~Punch-Card ballots.~~Punch-card ballots and lever machines.**

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A 'lever machine voting system' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment."

SECTION 13. G.S. 163-182.1 reads as rewritten:

"**§ 163-182.1. Principles and rules for counting official ballots.**

(a) General Principles That Shall Apply. – The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in

that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

~~(b) Rules and Directions by State Board of Elections. The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.~~

(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

(1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
(2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

(3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 14. G.S. 163-166.01 reads as rewritten:

"**§ 163-166.01. Hours for voting.**

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

SECTION 15. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election.

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 16. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) One of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.
b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 17.(a) Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 8A.

"HAVA Administrative Complaint Procedure.

"**§ 163-91. Complaint Procedure.**

(a) The Board shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the Board is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the Board shall complete all of the following:

(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.

(2) Accept oral and written comments on the proposed complaint procedure.

(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."

SECTION 17.(b) G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(c) Full Exemptions. – This Chapter applies to every agency except:

...

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes."

SECTION 18. G.S. 163-256 reads as rewritten:

"**§ 163-256. Regulations of State Board of Elections.**

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of ~~G.S. 150B-9.~~ Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials."

SECTION 19. G.S. 163-245 reads as rewritten:

"**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited

on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 20. G.S. 163-247(3) reads as rewritten:

"(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, ~~held during the calendar year the application was received.~~ held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election."

SECTION 21. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.27. Citation to Help America Vote Act of 2002.**

As used in this Chapter, the term the 'Help America Vote Act of 2002' means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law."

SECTION 22. Sections 1, 3, 4, 5, 12, 18, and 21 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.

VISITOR REGISTRATION SHEET

(1)

J-1 Committee — 5-13-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hall	Democracy North Carolina
Richard Gusler	Atty
Bill Scoggin	KCLH
S. Brothers	Rep. Ray
Virginia Hebert	Sen. Berger
Lynn Bonner	N&O
John McHugh	Gov office
Teri Saylor	NCPA
Chris Coucheron	Wake County BOE
Johnnie McLean	St. Bd. of Elections
Gary O. Bartlett	" " " "
Janis Langdon	NCIMS
Joyce Pitts	LP Press
Chorister	Sandra Anderson

VISITOR REGISTRATION SHEET

(2)

J-1-Committee — Name of Committee

5-13-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Rauf	State Board of Elections
JOHN BUSSIAN	N C Press Assn.
Tiki Dunton	NCPIRG
Carol Lauer	EGHS
Laura DeVun	NCGA
RAY RIFFE	NC AFL-CIO
C. W. Ley	Staff
Kathie Austin	FRD
Hal Miller	NCACCT
Ossie Edwards	1615 Dunbar St. Durham, N.C.
Sue Mengert	NCDW

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

5/13/03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners
Andy Romanet	NCLM
Donna Pigott	NCWRN
Rick Glazier	NC House
Frank Mebane	Sen Hunter Peters
John Phelps	NCLM
Beau Mills	[illegible]
Shari Dukes	Charlotte Observer
Paul Pulley	Pulley Watson
AG Horne	NCMS
Rob Ousley	NC State Water
Dick Taylor	NCAOR

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary 1** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	MAY 15, 2003	10:00 a.m.	1027 LB

REVISED NOTICE/SB-254 REMOVED

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
• HB-510	Improper Equipment Included In Speeding	Rep.Moore/Glazier/Hunter/Goodwin
• HB-562	Charlotte Photo Speed Measuring Systems	Rep. Alexander/Rhodes
• HB-786	Civil Parking/Red Light Prima Facie Rule	Rep. Culpepper
• HB-1024	Criminal History Record Checks	Rep. Goodwin
• HB-1046	Aggressive Driving	Rep. Hackney
•		

Senator Dan Clodfelter, Chair

JUDICIARY 1 COMMITTEE

May 15, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with thirteen members present. He introduced Pages, Domineque Lindsay from Garner, NC and James Whitley from Raleigh, NC

HB-1024 (Criminal History Record Checks) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Wayne Goodwin explained that the bill enacts into law and enters the State in the National Crime Prevention and Privacy Compact, a system for the interstate and federal-State exchange of criminal history records for non-criminal justice purposes. See attached Bill Summary for further information. No discussion. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

HB-562 (Charlotte Photo Speed Measuring Systems) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Representative Martha Alexander explained that the bill would authorize the City of Charlotte to use photographic speed measuring systems during a three-year pilot program in designated corridors. The bill would allow the City to establish civil penalties for speed limit and school zone speed limit violations. See attached Bill Summary for further information. Representative John Rhodes spoke on the bill. Senator's Phillip Berger, Vernon Malone, Ham Horton, R.C. Soles and Clark Jenkins had questions. Representatives. Alexander, Rhodes and Senator Clodfelter answered the questions. Mr. Boyd Cauble, Executive Assistant to Charlotte City Manager spoke on the bill. Senator Jenkins moved for a Favorable Report. Senator David Hoyle had a question. Rep. Alexander asked Charlotte Policeman, Dan Haggist to respond to the question. Senator Berger moved for an Amendment on pg.3, line 36 and pg.1, line 28. and that the bill be given a Favorable Report as Amended See attached Amendment. All members voted yes. Motion carried.

HB-1046 (Aggressive Driving) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Representative Joe Hackney explained that the bill creates a new traffic offense, aggressive driving. Senator's Tony Rand, David Hoyle and R.C. Soles had questions. Rep. Hackney answered the questions. Bill displaced.

HB-510 (Improper Equipment Included In Speeding) was introduced by Senator Clodfelter. Representative Rick Glazier explained that the bill would provide that a speeding violation includes a lesser-included offense of operating a motor vehicle with a speedometer that is not in good working order. See attached Bill Summary for further information. Senator Patrick Ballantine has a question. Rep. Hackney answered the question. Senator R.C. Soles moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, May 20, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1024** Criminal History Record Checks.

Draft Number:	PCS30337
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **562** Charlotte Photo Speed Measuring Systems.

Draft Number:	PCS60351
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, May 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **510** Improper Equipment Included in Speeding.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1024
PROPOSED SENATE COMMITTEE SUBSTITUTE H1024-PCS30337-RU-37

Short Title: Criminal History Record Checks. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ADOPTING THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT FOR NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 114 of the General Statutes is amended by:

(1) Designating G.S. 114-12 through G.S. 114-19 as:
"Part 1. General Powers and Duties of the State Bureau of Investigation.";

(2) Designating G.S. 114-19.1 through G.S. 114-19.11 as:
"Part 2. Criminal History Record Checks.";

(3) Designating G.S. 114-20 through G.S. 114-21 as:
"Part 3. Protection of Public Officials.";

(4) Recodifying G.S. 114-21 as G.S. 114-12.1.

SECTION 2. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.50. The National Crime Prevention and Privacy Compact.**

The National Crime Prevention and Privacy Compact is enacted into law and entered into with all jurisdictions legally joining in the compact in the form substantially as set forth in this section, as follows:

Preamble.

Whereas, it is in the interest of the State to facilitate the dissemination of criminal history records from other states for use in North Carolina as authorized by State law; and

Whereas, the National Crime Prevention and Privacy Compact creates a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes; and

Whereas, the compact provides for the organization of an electronic information-sharing system among the federal government and the states to exchange

criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment; and

Whereas, under the compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and party states for authorized purposes; and

Whereas, the FBI shall manage the federal data facilities that provide a significant part of the infrastructure for the system; and

Whereas, entering into the compact would facilitate the interstate and federal-state exchange of criminal history information to streamline the processing of background checks for noncriminal justice purposes; and

Whereas, release and use of information obtained through the system for noncriminal justice purposes would be governed by the laws of the receiving state; and

Whereas, entering into the compact will provide a mechanism for establishing and enforcing uniform standards for record accuracy and for the confidentiality and privacy interests of record subjects.

Article I.

Definitions.

As used in this compact, the following definitions apply:

(1) "Attorney General" means the Attorney General of the United States.

(2) "Compact officer" means:

a. With respect to the federal government, an official so designated by the director of the FBI; and

b. With respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular, full-time employee of the repository.

(3) "Council" means the compact council established under Article VI.

(4) "Criminal history record repository" means the State Bureau of Investigation's Division of Criminal Information.

(5) "Criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release. The term does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

(6) "Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) "Criminal justice agency" means: (i) courts; and (ii) a governmental agency or any subunit of an agency that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice. The term includes federal and state inspector general offices.

(8) "Criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) "Direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(10) "Executive order" means an order of the President of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "III system" means the interstate identification index system, which is the cooperative federal-state system for the exchange of criminal history records. The term includes the national identification index, the national fingerprint file, and, to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

(13) "National fingerprint file" means a database of fingerprints or of other uniquely personal identifying information that relates to an arrested or charged individual and that is maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(14) "National identification index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

(15) "National indices" means the national identification index and the national fingerprint file.

(16) "Noncriminal justice purposes" means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(17) "Nonparty state" means a state that has not ratified this compact.

(18) "Party state" means a state that has ratified this compact.

(19) "Positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of

subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, does not constitute positive identification.

(20) "Sealed record information" means:

a. With respect to adults, that portion of a record that is:

1. Not available for criminal justice uses;

2. Not supported by fingerprints or other accepted means of positive identification; or

3. Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

b. With respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(21) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article II.

Purposes.

The purposes of this compact are to:

(1) Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) Require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(3) Require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(4) Provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

(5) Require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

Article III.

Responsibilities of Compact Parties.

(a) The director of the FBI shall:

(1) Appoint an FBI compact officer who shall:

a. Administer this compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

b. Ensure that compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the Department of Justice and federal agencies and other agencies and organizations referred to in sub-subdivision (a)(1)a. of this Article III; and

c. Regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(2) Provide to federal agencies and to state criminal history record repositories criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:

a. Information from nonparty states; and

b. Information from party states that is available from the FBI through the III system but is not available from the party states through the III system;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV and ensure that the exchange of records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) Each party state shall:

(1) Appoint a compact officer who shall:

a. Administer this compact within that state;

b. Ensure that compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

c. Regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) Establish and maintain a criminal history record repository, which shall provide:

a. Information and records for the national identification index and the national fingerprint file; and

b. The state's III system-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) Participate in the national fingerprint file; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the criminal justice services set forth in this compact.

(c) In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(d) Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes. Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

Article IV.

Authorized Record Disclosures.

(a) To the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), the FBI shall provide on request criminal history records, excluding sealed record information, to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General to ensure that the state statute explicitly authorizes national indices checks.

(b) The FBI, to the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records, excluding sealed record information, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General to ensure that the state statute explicitly authorizes national indices checks.

(c) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures consistent with this compact and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records and shall:

(1) Ensure that records obtained under this compact are used only by authorized officials for authorized purposes;

(2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, that an appropriate "no record" response is communicated to the requesting official.

Article V.

Record Request Procedures.

(a) Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.

(c) Each request for criminal history record checks utilizing the national indices made under federal authority must be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which the request originated. Direct access to the national identification index by entities other than the FBI and state criminal history record repositories may not be permitted for noncriminal justice purposes.

(d) A state criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) (1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under subdivision (e)(1) of this Article V, the FBI positively identifies the subject as having a III system-indexed record or records:

a. The FBI shall so advise the state criminal history record repository; and

b. The state criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

Article VI.
Establishment of Compact Council.

(a) There is established a council to be known as the compact council which has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes. The council shall:

(1) Continue in existence as long as this compact remains in effect;

(2) Be located, for administrative purposes, within the FBI; and

(3) Be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(b) The council must be composed of 15 members, each of whom must be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a two-year term, who must be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states must be eligible to serve on an interim basis;

(2) Two at-large members, nominated by the director of the FBI, each of whom shall serve a three-year term, of whom:

a. One must be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

b. One must be a representative of the noncriminal justice agencies of the federal government;

(3) Two at-large members, nominated by the chair of the council once the chair is elected pursuant to subsection (c)(3) of this Article VI, each of whom shall serve a three-year term, of whom:

a. One must be a representative of state or local criminal justice agencies; and

b. One must be a representative of state or local noncriminal justice agencies;

(4) One member who shall serve a three-year term and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board; and

(5) One member, nominated by the director of the FBI, who shall serve a three-year term and who must be an employee of the FBI.

(c) From its membership, the council shall elect a chair and a vice-chair of the council. Both the chair and vice-chair of the council: (i) must be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chair may be an at-large member and (ii) shall serve two-year terms and may be reelected to only one additional two-year term. The vice-chair of the council shall serve as the chair of the council in the absence of the chair.

(d) The council shall meet at least once each year at the call of the chair. Each meeting of the council must be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at the meeting. A majority of the council or any committee of the council shall constitute a quorum of the council or of a committee, respectively, for the conduct

of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) The council shall make available for public inspection and copying at the council office within the FBI and shall publish in the federal register any rules, procedures, or standards established by the council.

(f) The council may request from the FBI reports, studies, statistics, or other information or materials that the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide assistance or information upon a request.

(g) The chair may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

Article VII.

Ratification of Compact.

This compact takes effect upon being entered into by two or more states as between those states and the federal government. When additional states subsequently enter into this compact, it becomes effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the executing state.

Article VIII.

Miscellaneous Provisions.

(a) Administration of this compact may not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) Nothing in this compact may require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Nothing in this compact may diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544) or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(a), regarding the use and dissemination of criminal history records and information.

Article IX.

Renunciation.

(a) This compact shall bind each party state until renounced by the party state.

(b) Any renunciation of this compact by a party state must:

(1) Be effected in the same manner by which the party state ratified this compact; and

(2) Become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

Article X.

Severability.

The provisions of this compact must be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or to the Constitution of the United States or if the applicability of any phrase, clause, sentence, or provision of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of the compact to any government, agency, person, or circumstance may not be affected by the severability. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact must remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Article XI.

Adjudication of Disputes.

(a) The council:

(1) Has initial authority to make determinations with respect to any dispute regarding:

a. Interpretation of this compact;

b. Any rule or standard established by the council pursuant to Article VI; and

c. Any dispute or controversy between any parties to this compact; and

(2) Shall hold a hearing concerning any dispute described in subdivision (a)(1) of this Article XI at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. The decision must be published pursuant to the requirements of Article VI(e).

(b) The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, to maintain system policy and standards, to protect the accuracy and privacy of records, and to prevent abuses until the council holds a hearing on the matters.

(c) The FBI or a party state may appeal any decision of the council to the Attorney General and after that appeal may file suit in the appropriate district court of the United States that has original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court must be removed to the appropriate district court of the United States in the manner provided by section 1446 of Title 28, United States Code, or other statutory authority."

SECTION 3. The North Carolina Attorney General shall report to the General Assembly on or before March 1, 2004, on the following:

(1) The compact officer to be appointed pursuant to Article III of the National Crime Prevention and Privacy Compact.

(2) Any rules or procedures to be adopted to implement the Compact.

(3) Any provisions of the General Statutes that must be repealed or amended to conform to the Compact.

SECTION 4. Part 2 of Article 4 of Chapter 114, as amended by Section 1 of this act, is amended by adding a new section to read:

"**§ 114-19.12. Criminal record checks for municipalities.**

The Department of Justice may provide to a city from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the city. The city shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 5. Part 4 of Article 7 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-164.1. Criminal history record check of employees permitted.**

The council may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. 114-19.12. The city may consider the results of these criminal history record checks in its hiring decisions."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 1024:
Criminal History Record Checks.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Goodwin
Date:	May 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1024-CSRU-38		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1024 enacts into law and enters the State in the National Crime Prevention and Privacy Compact, a system for the interstate and federal-State exchange of criminal history records for noncriminal justice purposes.***

BACKGROUND: Congress enacted legislation in 1998 to authorize and consent to the establishment of the National Crime Prevention and Privacy Compact. As of April 28, 2003, sixteen states had entered into the Compact. (See attached list)

BILL ANALYSIS:

Section 1 reorganizes various Department of Justice statutes.

Section 2 enacts into law and enters the State in the National Crime Prevention and Privacy Compact (Compact).

Article I. Definitions.

Article II. Purposes.

The main stated purpose for the Compact is the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. Noncriminal justice purposes include employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances. Under current law, the North Carolina Department of Justice is authorized to provide criminal history records for a number of noncriminal justice purposes, including criminal record checks of school personnel, providers of services to children and the elderly, foster care givers, certain employees of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention, prospective adoptive parents, and applicants for licensure as nurses.

Article III. Responsibilities of Compact Parties.

The Federal Bureau of Investigation (FBI) will appoint a Compact Officer to administer the Compact for federal agencies, provide to federal agencies and state criminal history record repositories criminal history records for noncriminal justice purposes, and provide and maintain a centralized information sharing system. Each party state will appoint a state Compact Officer to administer the Compact within the state, establish a criminal history record repository, and provide and maintain telecommunications and related equipment necessary to support the services set forth in the Compact.

Article IV. Authorized Record Disclosures.

The FBI will provide criminal history records to state criminal history record repositories for noncriminal justice purposes as allowed by federal or state law. The FBI and state criminal history record repositories will provide criminal history records to other governmental and nongovernmental agencies for noncriminal justice purposes as allowed by federal or state law. Any record obtained under the Compact may be used only for the official purposes for which the record was requested. Each state Compact Officer will establish procedures to protect the accuracy and privacy of criminal history records.

Article V. Record Request Procedures.

A request for a criminal history record check using the national identification index or the national fingerprint file must be submitted through a state's criminal history record repository or through the FBI. A state criminal history record repository or the FBI may charge a fee in accordance with applicable law for handling a fingerprint processing request. G.S. 114-19.1 currently authorizes the State Bureau of Investigation to charge a fee for providing criminal history records.

Article VI. Establishment of Compact Council.

There will be a Compact Council administratively located within the FBI that will adopt rules to administer the system for providing criminal history records for noncriminal justice purposes. The Compact Council will consist of 15 members appointed by the United States Attorney General. Nine of these members will be state compact officers.

Article VII. Ratification of Compact.

Article VIII. Miscellaneous Provisions.

Article IX. Renunciation.

To leave the Compact, the State would have to enact a law to do so within 180 days of notifying the other party states and the federal government of its intent.

Article X. Severability.

Article XI. Adjudication of Disputes.

The Compact Council has initial authority to make determinations regarding any dispute related to the Compact. The FBI or a party state may appeal a decision of the Compact Council to the United States Attorney General and after that may file suit in federal district court.

Section 3 directs the North Carolina Attorney General to report to the General Assembly on or before March 1, 2004 on the State Compact Officer to be appointed, rules or procedures adopted to implement the Compact, and any changes to the General Statutes needed to conform to the Compact.

Section 4 authorizes the Department of Justice to conduct State and national criminal history checks on behalf of cities on applicants for employment. These record checks will be based on fingerprints.

Section 5 authorizes cities to have criminal history record checks conducted on applicants for employment with the city and to use the results of the checks in hiring decisions.

EFFECTIVE DATE: This act is effective when it becomes law.

This summary was substantially contributed to by Jeff Hudson, Counsel to the House Judiciary II Committee.

H1024-SMRU V2-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1024

Short Title:	Criminal History Record Checks.	(Public)
Sponsors:	Representatives Goodwin; Farmer-Butterfield, Goforth, Jones, and Parmon.	
Referred to:	Judiciary II.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ADOPTING THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT FOR NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 114 of the General Statutes is amended by:

(1) Designating G.S. 114-12 through G.S. 114-19 as:
"Part 1. General Powers and Duties of the State Bureau of Investigation.";

(2) Designating G.S. 114-19.1 through G.S. 114-19.11 as:
"Part 2. Criminal History Record Checks.";

(3) Designating G.S. 114-20 through G.S. 114-21 as:
"Part 3. Protection of Public Officials.";

(4) Recodifying G.S. 114-21 as G.S. 114-12.1.

SECTION 2. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.20. The National Crime Prevention and Privacy Compact.**

The National Crime Prevention and Privacy Compact is enacted into law and entered into with all jurisdictions legally joining in the compact in the form substantially as set forth in this section, as follows:

Preamble.

Whereas, it is in the interest of the State to facilitate the dissemination of criminal history records from other states for use in North Carolina as authorized by state law; and

Whereas, the National Crime Prevention and Privacy Compact creates a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes; and

Whereas, the compact provides for the organization of an electronic information-sharing system among the federal government and the states to exchange

criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment; and

Whereas, under the compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and party states for authorized purposes; and

Whereas, the FBI shall manage the federal data facilities that provide a significant part of the infrastructure for the system; and

Whereas, entering into the compact would facilitate the interstate and federal-state exchange of criminal history information to streamline the processing of background checks for noncriminal justice purposes; and

Whereas, release and use of information obtained through the system for noncriminal justice purposes would be governed by the laws of the receiving state; and

Whereas, entering into the compact will provide a mechanism for establishing and enforcing uniform standards for record accuracy and for the confidentiality and privacy interests of record subjects.

Article I.
Definitions.

As used in this compact, the following definitions apply:

(1) "Attorney General" means the Attorney General of the United States.

(2) "Compact officer" means:

a. With respect to the federal government, an official so designated by the director of the FBI; and

b. With respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular, full-time employee of the repository.

(3) "Council" means the compact council established under Article VI.

(4) "Criminal history record repository" means the State Bureau of Investigation's Division of Criminal Information.

(5) "Criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release. The term does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

(6) "Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) "Criminal justice agency" means: (i) courts; and (ii) a governmental agency or any subunit of an agency that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice. The term includes federal and state inspector general offices.

(8) "Criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) "Direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(10) "Executive order" means an order of the President of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "III system" means the interstate identification index system, which is the cooperative federal-state system for the exchange of criminal history records. The term includes the national identification index, the national fingerprint file, and, to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

(13) "National fingerprint file" means a database of fingerprints or of other uniquely personal identifying information that relates to an arrested or charged individual and that is maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(14) "National identification index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

(15) "National indices" means the national identification index and the national fingerprint file.

(16) "Noncriminal justice purposes" means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(17) "Nonparty state" means a state that has not ratified this compact.

(18) "Party state" means a state that has ratified this compact.

(19) "Positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of

subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, does not constitute positive identification.

(20) "Sealed record information" means:

a. With respect to adults, that portion of a record that is:

1. Not available for criminal justice uses;

2. Not supported by fingerprints or other accepted means of positive identification; or

3. Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

b. With respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(21) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article II.

Purposes.

The purposes of this compact are to:

(1) Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) Require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(3) Require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(4) Provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

(5) Require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

Article III.

Responsibilities of Compact Parties.

(a) The director of the FBI shall:

(1) Appoint an FBI compact officer who shall:

a. Administer this compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

b. Ensure that compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the Department of Justice and federal agencies and other agencies and organizations referred to in sub-subdivision (a)(1)a. of this Article III; and

c. Regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(2) Provide to federal agencies and to state criminal history record repositories criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:

a. Information from nonparty states; and

b. Information from party states that is available from the FBI through the III system but is not available from the party states through the III system;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV and ensure that the exchange of records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) Each party state shall:

(1) Appoint a compact officer who shall:

a. Administer this compact within that state;

b. Ensure that compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

c. Regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) Establish and maintain a criminal history record repository, which shall provide:

a. Information and records for the national identification index and the national fingerprint file; and

b. The state's III system-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) Participate in the national fingerprint file; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the criminal justice services set forth in this compact.

(c) In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(d) Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes. Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

Article IV.

Authorized Record Disclosures.

(a) To the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), the FBI shall provide on request criminal history records, excluding sealed record information, to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General to ensure that the state statute explicitly authorizes national indices checks.

(b) The FBI, to the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records, excluding sealed record information, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General to ensure that the state statute explicitly authorizes national indices checks.

(c) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures consistent with this compact and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records and shall:

(1) Ensure that records obtained under this compact are used only by authorized officials for authorized purposes;

(2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

Article V.

Record Request Procedures.

(a) Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.

(c) Each request for criminal history record checks utilizing the national indices made under federal authority must be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which the request originated. Direct access to the national identification index by entities other than the FBI and state criminal history record repositories may not be permitted for noncriminal justice purposes.

(d) A state criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) (1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under subdivision (e)(1) of this Article V, the FBI positively identifies the subject as having a III system-indexed record or records:

a. The FBI shall so advise the state criminal history record repository; and

b. The state criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

Article VI.

Establishment of Compact Council.

(a) There is established a council to be known as the compact council which has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes. The council shall:

(1) Continue in existence as long as this compact remains in effect;

(2) Be located, for administrative purposes, within the FBI; and
(3) Be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(b) The council must be composed of 15 members, each of whom must be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a two-year term, who must be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states must be eligible to serve on an interim basis;
(2) Two at-large members, nominated by the director of the FBI, each of whom shall serve a three-year term, of whom:
a. One must be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and
b. One must be a representative of the noncriminal justice agencies of the federal government;
(3) Two at-large members, nominated by the chair of the council once the chair is elected pursuant to subsection (c)(3) of this Article VI, each of whom shall serve a three-year term, of whom:
a. One must be a representative of state or local criminal justice agencies; and
b. One must be a representative of state or local noncriminal justice agencies;
(4) One member who shall serve a three-year term and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board; and
(5) One member, nominated by the director of the FBI, who shall serve a three-year term and who must be an employee of the FBI.

(c) From its membership, the council shall elect a chair and a vice-chair of the council. Both the chair and vice-chair of the council: (i) must be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chair may be an at-large member and (ii) shall serve two-year terms and may be reelected to only one additional two-year term. The vice-chair of the council shall serve as the chair of the council in the absence of the chair.

(d) The council shall meet at least once each year at the call of the chair. Each meeting of the council must be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at the meeting. A majority of the council or any committee of the council shall constitute a quorum of the council or of a committee, respectively, for the conduct

of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) The council shall make available for public inspection and copying at the council office within the FBI and shall publish in the federal register any rules, procedures, or standards established by the council.

(f) The council may request from the FBI reports, studies, statistics, or other information or materials that the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide assistance or information upon a request.

(g) The chair may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

Article VII.

Ratification of Compact.

This compact takes effect upon being entered into by two or more states as between those states and the federal government. When additional states subsequently enter into this compact, it becomes effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the executing state.

Article VIII.

Miscellaneous Provisions.

(a) Administration of this compact may not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) Nothing in this compact may require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Nothing in this compact may diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544) or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(a), regarding the use and dissemination of criminal history records and information.

Article IX.

Renunciation.

(a) This compact shall bind each party state until renounced by the party state.

(b) Any renunciation of this compact by a party state must:

(1) Be effected in the same manner by which the party state ratified this compact; and

(2) Become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

Article X.

Severability.

The provisions of this compact must be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or to the Constitution of the United States or if the applicability of any phrase, clause, sentence, or provision of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of the compact to any government, agency, person, or circumstance may not be affected by the severability. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact must remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Article XI.

Adjudication of Disputes.

(a) The council:

(1) Has initial authority to make determinations with respect to any dispute regarding:

a. Interpretation of this compact;

b. Any rule or standard established by the council pursuant to Article VI; and

c. Any dispute or controversy between any parties to this compact; and

(2) Shall hold a hearing concerning any dispute described in subdivision (a)(1) of this Article XI at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. The decision must be published pursuant to the requirements of Article VI(e).

(b) The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, to maintain system policy and standards, to protect the accuracy and privacy of records, and to prevent abuses until the council holds a hearing on the matters.

(c) The FBI or a party state may appeal any decision of the council to the Attorney General and after that appeal may file suit in the appropriate district court of the United States that has original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court must be removed to the appropriate district court of the United States in the manner provided by section 1446 of Title 28, United States Code, or other statutory authority."

SECTION 3. The North Carolina Attorney General shall report to the General Assembly on or before March 1, 2004, on the following:

(1) The compact officer to be appointed pursuant to Article III of the National Crime Prevention and Privacy Compact.

(2) Any rules or procedures to be adopted to implement the Compact.

(3) Any provisions of the General Statutes that must be repealed or amended to conform to the Compact.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 562
Committee Substitute Favorable 4/28/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H562-PCS60351-RK-53

Short Title: Charlotte Photo Speed-Measuring Systems. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.4. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) A municipality may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation, written in both English and Spanish, clearly stating the manner in which the violation may be challenged and containing both a street address within the municipality and a local or toll-free telephone number at which the owner may challenge the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The administrative hearing process shall include methods for challenging the violation or penalty either in person, at the

street address provided on the citation, or through the telephone, at the telephone number provided on the citation. The municipality shall ensure that a Spanish-speaking person is available both at the street address and through the telephone number to assist Spanish-speaking persons. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the photographic speed-measuring system; paying for operation of the system, either by the municipality or by a contractor; paying for a program to provide public awareness of the system; and paying any administrative costs incurred by the municipality related to the use of the system."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.4 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer who has been certified by the North Carolina Criminal Justice Education and Training Standards Commission under G.S. 17-6(a).

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal

Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.4(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only, and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 562 DATE 15 May 03

S. B. No: _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Berger

moves to amend the bill on page 3, line 36

( ) WHICH CHANGES THE TITLE

by inserting before the period the following:

"who has been certified by the North Carolina Criminal Justice ~~and~~ Education and Training Standards Commission under G.S. 17-6(a)"; and

on page 1, line 28

by deleting the word "Municipalities" and substituting the words "a municipality"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 562:
Charlotte Photo Speed Measuring Systems.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Alexander and Rhodes
Date:	April 15, 2003	**Summary by:**	H. Alan Pell
Version:			Committee Co-Counsel

SUMMARY: ***House Bill 562 would authorize the City of Charlotte to use photographic speed-measuring systems during a three year pilot program in designated corridors. The bill would allow the City to establish civil penalties for speed limit and school zone speed limit violations.***

BILL ANALYSIS:

Section 1 of the bill creates a new G.S. 160A-300.2 which authorizes municipalities to adopt ordinances for the civil enforcement of speed limit and school zone speed limit violations through the use of photographic speed measuring systems. A photographic speed measuring system is a "speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction".

The speed measuring systems would be calibrated pursuant to standards adopted by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety and would be monitored by a sworn law enforcement officer at all times that the system is actively in use. Any system installed or in use shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of the system.

The owner of a vehicle photographed is responsible for the violation unless the owner furnishes evidence within 21 days of notification of the violation that, at the time of the offense, the vehicle was under the care, custody or control of another person or that the vehicle had been stolen or was otherwise in the care, custody or control of a person without permission to use the vehicle. The violation is noncriminal and a civil penalty of $50 is assessed. In addition, no license or insurance points may be assigned to the owner or the driver of the vehicle.

The citation will be mailed to the owner. Personal service is not required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to an additional penalty not to exceed $50.00.

The municipality must institute a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed. An administrative hearing decision shall be subject tot review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed measuring systems.

Section 2 of the bill sets for the criteria under which the results of the use of a photographic speed measuring system are admissible as evidence in a nonjudicial administrative hearing held pursuant to Section 1 of this bill for the purpose of establishing the speed of the vehicle.

In order for the results of a photographic speed measuring system to be admissible all of the following criteria must be met:

- The photographic speed measuring system was approved by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety.
- The photographic speed measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.
- At the time the results were obtained, the photographic speed measuring system was being monitored by a sworn law enforcement officer.

Section 3 of the bill amends G.S. 17C-6(a) to authorize the North Carolina Criminal Justice Education and Training Standards Commission, in conjunction with the Secretary of Crime Control and Public Safety, to approve use of specific models and types of photographic speed measuring systems and establish the standards for calibration and testing for accuracy of each approved system.

Section 4 restricts the application Section 1 of this bill to the City of Charlotte and the use of the photographic speed measuring system to 14 specifically identified corridors within the City of Charlotte.

This act is effective July 1, 2003 and expires June 30, 2006.

BACKGROUND: This Committee gave a favorable report to S 552, which was re-referred to the Senate Finance Committee. The Senate Bill provided that it was applicable to municipalities with 500,000 persons or over. It did not set up a "pilot program" and the bill did not limit the program to specific "corridors." This bill is designated a Public Bill, but applies only "to the City of Charlotte only."

Summary Contribution by Susan Sitze, Staff Attorney.

H562-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 562

Short Title:	Charlotte Photo Speed Measuring Systems.	(Public)
Sponsors:	Representatives Alexander, Rhodes (Primary Sponsors); Cunningham and Earle.	
Referred to:	Judiciary I.	

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation clearly stating the manner in which the violation may be challenged. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed-measuring systems."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.2 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 1046
Committee Substitute Favorable 4/23/03
Third Edition Engrossed 4/29/03

Short Title: Aggressive Driving. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO DEFINE THE OFFENSE OF AGGRESSIVE DRIVING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.6. Aggressive driving.**

(a) A person commits the offense of aggressive driving if both of the following occur:

(1) During a course of conduct the person commits a violation of either G.S. 20-141 or G.S. 20-141.1 and at least two of the following offenses:

a. Running through a red light in violation of G.S. 20-158(b)(2) or (b)(3), or G.S. 20-158(c)(2) or G.S. (c)(3).

b. Running through a stop sign in violation of G.S. 20-158(b)(1) or (c)(1).

c. Illegal passing in violation of G.S. 20-149 or G.S. 20-150.

d. Following too closely in violation of G.S. 20-152.

e. Failing to yield right-of-way in violation of G.S. 20-155, 20-156, 20-158(b)(4) or (c)(4), or 20-158.1.

(2) The person's driving is an immediate hazard to another person or vehicle.

(b) A person convicted of aggressive driving is guilty of a Class 2 misdemeanor.

(c) For purposes of this section, 'course of conduct' means a series of acts committed during a single continuous period of driving.

(d) No person shall be convicted of both aggressive driving and reckless driving pursuant to G.S. 20-140 for the same course of conduct."

SECTION 2. G.S. 20-16(a)(9) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

...

(9) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour, or of~~hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour;~~hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

..."

SECTION 3. G.S. 20-16(c) reads as rewritten:

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Aggressive driving	4
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2

Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus 8
Rail-highway crossing violation 6
Careless and reckless driving in violation of G.S. 20-140(f) 6
Speeding in violation of G.S. 20-141(j3) 6
Aggressive driving 5
Reckless driving 5
Hit and run, property damage only 5
Following too close 5
Driving on wrong side of road 5
Illegal passing 5
Running through stop sign 4
Speeding in excess of 55 miles per hour 4
Failing to yield right-of-way 4
Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height

Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

SECTION 4. G.S. 20-17(a)(6) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(6) ~~Conviction upon~~Conviction, within a period of 12 months, of (i) two charges of reckless ~~driving committed within a period of 12 months.~~driving, (ii) two charges of aggressive driving, or (iii) one or more charges of reckless driving and one or more charges of aggressive driving.

..."

SECTION 5. G.S. 20-17(a)(7) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(7) Conviction upon one charge of reckless driving or one charge of aggressive driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

..."

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 1046: Aggressive Driving.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Hackney
Date:	May 15, 2003	**Summary by:**	H. Alan Pell
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1046 creates a new traffic offense, aggressive driving.***

BILL ANALYSIS:

Section 1 of the PCS creates a new motor vehicle offense of aggressive driving. A person commits the offense of aggressive driving if two criteria are met:

1. During a course of conduct the person commits a speeding violation and at least two of the following:
    - Running through a red light
    - Running through a stop sign
    - Illegal passing
    - Following too closely
    - Failing to yield right-of-way

AND

2. The person's driving is an immediate hazard to another person or vehicle.

The offense is a Class 2 misdemeanor. "Course of conduct" is defined, and the act provides that a person may not be convicted of both aggressive driving and reckless driving.

Section 2 of the PCS amends G.S. 20-16(a)(9) to allow the Division of Motor Vehicles (DMV) to suspend the license of a person convicted, within a 12 month period, of one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour. This suspension is permissive and the suspension period is in the discretion of the DMV, but shall not exceed 6 months.

Section 3 of the PCS amends G.S. 20-16(c) to provide for 5 driver's license points for a conviction of aggressive driving.

Section 4 of the PCS amends G.S. 20-17(a)(6) to provide for a mandatory revocation of the license of a person convicted, within a 12 month period, of two charges of aggressive driving, or one or more charges of reckless driving and one or more charges of aggressive driving. The revocation is effective for 1 year.

Section 5 of the PCS amends G.S. 20-17(a)(7) to provide for a mandatory revocation of the license of a person convicted of one charge of aggressive driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

Section 6 provides that the act is effective December 1, 2003 and applies to offenses committed on or after that date.

H1046-smrk-01 (Summary Contribution by Susan Sitze, Staff Attorney)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 510

Short Title:	Improper Equipment Included in Speeding.	(Public)
Sponsors:	Representatives Moore, Glazier, Hunter, and Goodwin (Primary Sponsors).	
Referred to:	Judiciary II.	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT TO INCLUDE A VIOLATION OF G.S. 20-123.2 AS A LESSER INCLUDED OFFENSE IN A SPEEDING VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141 is amended by adding a new subsection to read:

"(o) A violation of G.S. 20-123.2 shall be a lesser included offense in any violation of this section."

SECTION 2. This act becomes effective December 1, 2003. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

(3)

VISITOR REGISTRATION SHEET

J-1 Committee — 5-15-03 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	UMCIC
Sharf Durhams	Charlotte Observer
John Phelps	NCLM
Gary Simmons	GSK
Claude Gillikin	Gilbin Group
Neil Osborne	AOC
Jim Drennan	IUG
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn

HOUSE BILL 510:
Improper Equipment Included in Speeding.

BILL ANALYSIS

Committee:	Senate Judiciary Ii	**Introduced by:**	Reps. Moore, Glazier, Hunter & Goodwin
Date:	May 15, 2003		
Version:	First Edition	**Summary by:**	H. Alan Pell Committee Co-Counsel

SUMMARY: ***House Bill 510 would provide that a speeding violation includes a lesser included offense of operating a motor vehicle with a speedometer that is not in good working order. The bill would become effective December 1, 2003.***

CURRENT LAW:

- It is an infraction to operate a motor vehicle on the highway if it is not equipped with a speedometer that is maintained in good working order. G.S. 20-123.2
- No driver's license points, insurance points, or premium surcharge may be imposed as a result of a violation of this offense.
- It is unlawful for a person to drive a vehicle on the highway at a speed that is "greater than is reasonable and prudent under the conditions then existing." G.S. 20-141
- Generally, a speeding violation is an infraction punishable by not more than $100.
- A person who drives more than 15 miles per hour (mph) over the speed limit or 80 mph is guilty of a Class 2 misdemeanor.
- Two (2) drivers license points are assigned for conviction of 55 mph or less; three (3) drivers license points are assigned for convictions of speeding in excess of 55 mph. Depending on the speed involved and the number of convictions, it is possible that the DMV may suspend the driver's license.
- Each speeding conviction can earn the driver one to four insurance points, depending on the speed involved.

BILL ANALYSIS: The bill would amend G.S. 20-141 to provide that a faulty speedometer is a lesser-included offense under a speeding violation. The amendment could allow defendants to plead to the lesser offense, thereby avoiding the penalties, including drivers license and insurance points, which are the consequence of a speeding conviction.

NC case law defines a "lesser included offense" as one that has some, but not all, of the elements of the greater offense, and that has no element that the greater offense does not have. A person commits a speeding offense if that person (1) drives; (2) a vehicle; (3) on a highway or public vehicular area; and (4) at a speed greater than is reasonable and prudent under the conditions then existing. A person would commit the faulty speedometer offense if that person (1) operates; (2) a self-propelled motor vehicle; (3) on a highway; and (4) with a speedometer that is not maintained in good working order.

The two offenses involved in this bill are related, but have different elements. As a result, they may not meet the test for a "lesser included offense." The NC Court of Appeals once held that the superior court

[OVER]

could not accept a guilty plea to reckless driving when the defendant was charged with driving under the influence. ***State v. Craig***, 21 N.C. App. 51 (1974). The court stated, "[Even if reckless driving is a related charge, it] is not a lesser offense included in the charge of driving under the influence of intoxicating liquor. The two offenses are separate and distinct even though they may both arise out of the same transaction." At that time, the offense of reckless driving did not include an element of driving under the influence.

Following the *Craig* decision, the General Assembly amended the statute governing reckless driving to include the following subsection:

> "Any person who operates a motor vehicle upon a highway ... after consuming such quantity of intoxicating liquor as directly and visible affects his operation of said vehicle shall be guilty of reckless driving and such offense shall be a lesser included offense of driving under the influence...."

Following the effective date of the amendment, in ***Carolina v. Burris***, 30 N.C.App. 250 (1976), the N.C. Court of Appeals held that the trial court erred by failing to instruct the lesser-included offense of reckless driving in a driving under the influence case, holding that the courts were required to apply the statutes in "a manner to effectuate the intent of the Legislature" unless the statute was unconstitutional.

EFFECTIVE DATE: The bill would become effective December 1, 2003. Prosecutions for offenses committed before that date would not be abated or affected by this act.

Summary Contribution by Robin Johnson, Staff Attorney.

(Ben Loeb, Jr., Institute of Government, assisted with information in this summary.)

H510-SMRK-01

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 20, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 65	Autopsy Photos Not Public Record.	Representative Ray
HB 273	Adverse Reactions to Smallpox Vaccination.	Representative Warner Representative Goodwin Representative Lucas Representative Glazier
HB 842	Help America Vote Act Compliance.	Representative Michaux, Jr. Representative Stam
HB 916	First-Responders Vaccination Program.	Representative Brubaker
HB 1114	School Volunteer Records are Confidential.	Representative Saunders

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

May 20, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with thirteen members present. He introduced Pages, Michael Whittenberg from Huntersville, NC and Thomas Tolbert from Charlotte, NC.

HB-916 (First Responders Vaccination Program) Committee Substitute was introduced by Senator R.C. Soles, Co Chair. In the absence of bill sponsor, Representative Harold Brubaker, Senator David Hoyle explained that the bill establishes a first responders vaccination program for emergency personnel who are likely to be the first to respond to a disaster location and may be exposed to infectious diseases. See attached Bill Summary for further information. Senator's Soles, Patrick Ballantine, Charlie Albertson, Vernon Malone and Jeanne Lucas had questions. Mr. Chris Hoke, Division of Public Health spoke on the bill and answered questions. No further discussion. Bill displaced for future hearing.

HB-273 Adverse Reactions to Smallpox Vaccination)Committee Substitute was introduced by Senator Soles, Co Chair. Bill sponsor, Representative Rick Glazier explained that the provides various coverage for persons injured as a result of smallpox vaccinations received in connection with their employment. Those protected are the recipients of the vaccine as well as household members injured as a result of contact with the vaccinated person. See attached Fiscal Note and Bill Summary for further information, Co-sponsor, Representative Wayne Goodwin spoke on the bill. Senator Patrick Ballantine had a question and offered an Amendment to the bill on pg.2, lines 27 & 28. He moved for adoption of the Amendment. All members voted yea. Motion carried. Senator Ham Horton moved for a Favorable Report. All members voted yes. Motion carried.

HB-842 (Help America Vote Act Compliance) Committee Substitute was introduced by Senator Soles. Bill sponsor, Paul Stam explained that the bill is designed to comply with six provisions of the HAVA of year 2000.HAVA requires that all Stated comply with these provisions regardless of whether they receive federal money. See attached Bill Summary for further information. Staff Attorney, Bill Gilkeson explained the bill in more detail. Senator Patrick Ballantine and Senator Vernon Malone had questions. Mr.

Gary Bartlett, NC Board of Elections answered the questions. Senator Ballantine moved for an Amendment to the bill on Pg. 13, line 29. Senator Clodfelter called for a vote on the Amendment. All members voted yes. Motion Carried See attached Amendment. Senator Clodfelter said the bill would be displaced at this time for further study.

Being no further business the meeting adjourned at 10:54 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, May 22, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **821** Filling Candidate Vacancy.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **273** Adverse Reactions to Smallpox Vaccination.
Draft Number: PCS 30342
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 916

Committee Substitute Favorable 4/28/03
Senate Judiciary I Committee Substitute Adopted 6/3/03

Short Title: First Responders Vaccination Program. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VACCINATION PROGRAM FOR FIRST RESPONDERS TO TERRORIST INCIDENTS, CATASTROPHIC OR NATURAL DISASTERS, OR EMERGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-485. Vaccination program established; definitions.**

(a) The Department and local health departments shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination, and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary, as determined by the State Health Director.

(b) Participation in the vaccination program is voluntary by the first responders, except for first responders who are classified as having "occupational exposure" to bloodborne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 C.F.R. § 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(c) Nothing in this section shall require first responders, except first responders for whom the vaccination program is not voluntary as set forth in subsection (b) of this section, who present a written statement from a licensed physician indicating that a vaccine is medically contraindicated for the first responder or who sign a written statement that the administration of a vaccination conflicts with the first responder's religious tenets, to receive a vaccine.

(d) In the event of a vaccine shortage, the State Public Health Director, in consultation with the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders deployed to a disaster location.

(e) The Department shall notify first responders of the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(f) As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Bioterrorism' means the intentional use of any microorganism, virus, infectious substance, biological product, or biological agent as defined in G.S. 130A-479 that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product to cause or attempt to cause death, disease, or other biological malfunction in any living organism.

(2) 'Disaster location' means any geographical location where a bioterrorism attack, terrorist incident, catastrophic or natural disaster, or emergency occurs.

(3) 'First responders' means State and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or emergencies."

SECTION 2. Nothing in this act obligates the General Assembly to appropriate State funds for the implementation of this act. The Department of Health and Human Services shall work with local employers to access, when available, federal funds to implement a vaccination program for first responders as enacted in Section 1 of this act.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 916 : FIRST-RESPONDERS VACCINATION PROGRAM.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Brubaker and Insko
Date:	May 20, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 916 establishes a first responders vaccination program for emergency personnel who are likely to be the first responders deployed to disaster locations who may be exposed to infectious diseases. Vaccinations will be available to first responders when recommended by the United States Public Health Service.***

BILL ANALYSIS: House Bill 916 establishes a vaccination program in the Department of Health and Human Services and local health departments for first responders who may be exposed to infectious diseases when deployed to disaster locations. Under the bill "first responders" are State and local law enforcement personnel and emergency medical personnel who would be deployed to such locations. Participation in the program is voluntary for most first responders. The program would be mandatory for first responders who are exposed to bloodborne pathogens including but not limited to hepatitis B virus and HIV. A first responder may be exempt from vaccinations for medical or religious reasons. Under the bill the State Public Health Director must give priority to first responders deployed to a disaster location if there is a shortage of vaccine. The Department shall notify first responders about the availability of the program and shall provide educational materials about how to prevent exposure to infectious diseases. The Department and local health departments will implement the vaccination program upon the application for and receipt of federal funds.

BACKGROUND: The Kentucky state legislature enacted similar legislation this session. The state legislatures of Oklahoma and Mississippi have passed similar legislation, but the bills have yet to be signed into law. In addition, the Missouri state legislature has considered similar legislation this session.

EFFECTIVE DATE: The bill is effective when it becomes law.

Sandra Alley, Counsel to the House Health Committee and Amy Compeau, Research Assistant, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 273*

Committee Substitute Favorable 4/2/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H273-PCS30342-RK-56

Short Title: Adverse Reactions to Smallpox Vaccination. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT EMPLOYEES WHO RECEIVE VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub.

L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)), or when the infection or adverse medical reaction is due to the employee being exposed to another employee vaccinated as described in this subdivision.

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination received by the employee. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the employee under this section. No showing of negligence is required under this section. The provisions of G.S. 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination.**

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who receives in employment vaccination against smallpox incident to the Administration of Smallpox

Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees."

SECTION 5. Part 4 of Article 7 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-164.1. Smallpox vaccination policy.**

All municipalities that employ firefighters, police officers, paramedics, or other first responders shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p))."

SECTION 6. Part 4 of Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-94.1. Smallpox vaccination policy.**

All counties that employ firefighters, law enforcement officers, paramedics, other first responders, or health department employees shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p))."

SECTION 7. In the event that federal regulatory or statutory provisions providing compensation and benefits to persons for infection with smallpox, infection with vaccinia, or any adverse medical reaction incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) are adopted, a condition precedent to recovery under this act shall be that the person claiming compensation and benefits under this act shall first seek compensation and benefits under the federal provisions, with those provisions constituting primary coverage and the person then being entitled to compensation and benefits under this act not exceeding a total recovery under the federal provisions and this act equal to the amount available under the applicable provisions of this act.

SECTION 8. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 9. This act is effective when it becomes law and applies to claims arising from infection or adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No.107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) whether the infection or adverse medical reactions occurred before, on, or after the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 273 DATE 20 May 2003

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen) BALLANTINE

1 moves to amend the bill on page 2, line 27-28
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words,
4
5 "of certain health professionals
6 against smallpox"
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 273:
Adverse Reactions To Smallpox Vaccination.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Glazier
Date:	May 20, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: House Bill 273 provides various coverages for persons injured as a result of smallpox vaccinations received in connection with their employment. Those protected are the recipients of the vaccine as well as household members injured as a result of contact with the vaccinated person.

CURRENT LAW: Many years have passed since there has been a smallpox vaccination program in this country. Therefore, the applicability of workers' compensation laws and the state health plan to those who suffer an adverse reaction is uncertain. State employees who are injured as a result of adverse reactions to the vaccine would have to use sick leave, and compensation for members of the employee's household who suffered an adverse reaction because of their proximity to the vaccinated person would have difficulty proving their claim against the State under the State Tort Claims Act. The combined effect of all this would be that workers who are encouraged to be vaccinated pursuant to the Homeland Security Act in order to work in the event of a smallpox emergency will be discouraged from getting the vaccination.

BILL ANALYSIS: Section 1 of the bill adds adverse medical reactions as a result of smallpox vaccination to the list of covered expenses under the Teachers' and State Employees' Comprehensive Major Medical Plan.

Section 2 adds adverse medical reactions from in-employment smallpox vaccinations to the list of occupational illnesses covered by workers' compensation.

Section 3 provides a method for persons living in the home of a State employee, community college employee, or employee of the University of North Carolina or its affiliates, who are injured because of an adverse medical reaction resulting from in-employment smallpox vaccination of the employee to make a tort claim similar to those made under the State Tort Claims Act, EXCEPT that no showing of negligence on the part of the State or the State employee is required, and the defense of contributory negligence is not allowed. The Industrial Commission hears the claim and the maximum recovery from one incident is $500,000.

Section 4 provides in subsection (a) that absence from work by a State employee, community college employee, or UNC or UNC affiliate employee due to an adverse medical reaction from smallpox vaccination shall not be counted against sick leave and that the employee's full salary shall continue to be paid, up to a maximum of 480 employment hours (12 weeks). Subsection (b) of this section provides that the State employees described above will have the same protections from loss of sick leave or salary if they are out of work because a person in the household (who may or may not be a State employee) receives a smallpox vaccination and causes the State employee to have an adverse medical reaction, or because the State employee needs to stay out of work to care for the vaccinated person who is having an adverse medical reaction.

Sections 5 and 6 require cities and counties respectively to adopt within 90 days a policy regarding sick leave and salary continuation for employees absent from work due to an adverse medical reaction to a smallpox vaccination.

Section 7 makes the benefits under this bill secondary to the benefits provided for under federal law for adverse medical reactions to smallpox vaccinations, and reduces the State's obligations under the bill by the amounts recovered under federal law. The President signed HR 1770 into law on April 30, 2003. This law provides for federal benefits for death, permanent disability and temporary disability arising as a result of an adverse medical reaction to a smallpox vaccination.

Section 8 contains a severability clause.

EFFECTIVE DATE: The bill is effective when it becomes law, and applies retroactively as well as prospectively.

This summary was substantially contributed to by Steve Rose, Counsel to the House Judiciary IV Committee.

H273-SMRU-003

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 273 (Second Edition)

SHORT TITLE: Adverse Reactions to Smallpox Vaccination

SPONSOR(S): Representatives Glazier, Warner, Lucas, and Goodwin

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
REVENUES					
EXPENDITURES					
NC Industrial Commission	*No General Fund Impact*				
-The Commission estimates the impact of the proposed legislation to be negligible.					
POSITIONS: (cumulative)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Industrial Commission

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: The proposed legislation would cover the necessary medical services for employees infected with smallpox, infected from the smallpox vaccinia, or suffering any adverse medical reaction resulting from smallpox countermeasures under Section 304 of the federal Homeland Security Act of 2002. Household members living in the homes of vaccinated employees will also be covered for adverse reactions due to the vaccination. **Section 3** of the proposed legislation gives the North Carolina Industrial Commission jurisdiction to hear and determine claims made against the state by people who are temporarily or permanently living in the home of a State employee who receives the smallpox vaccination. If the federal government provides compensation and benefits for adverse reactions, employees are required to seek compensation and benefits under the federal provisions before seeking recovery under this state act.

ASSUMPTIONS AND METHODOLOGY: This fiscal note analyzes the impact of Section 3 of the proposed legislation only. A corresponding actuarial note addresses the remaining portions of the bill.

Historical background on Smallpox – In the past, about 1,000 people for every one million people vaccinated for the first time experienced reactions that, while not life-threatening, were serious. Between 14 and 52 people per one million people vaccinated for the first time experienced potentially life-threatening reactions. It is estimated that between one and two people out of every one million people vaccinated may die as a result of life-threatening reactions to the vaccine.

North Carolina ordered approximately 7,500 doses of the smallpox vaccination for Phase 1, which includes mainly healthcare professionals and local government health officials. If Phase 2 vaccinations were to take effect (currently there is not a planned date for this step to occur) approximately 250,000 doses of the vaccine would be ordered. As of April 4, 2003, **1,183** individuals in North Carolina have been vaccinated. Only nine people in the State have been reported to experience a mild adverse reaction.

The Center for Disease Control (CDC) reports that 31,297 individuals in the United States have received the smallpox vaccination as of April 4, 2003. No potentially life-threatening events have been reported, and 68 moderate to severe events have been reported. No cases of transmission from civilian vaccines have been reported. Seven cases of transmission from military personnel to civilian contacts have been reported.

The North Carolina Industrial Commission (Commission) would handle claims resulting from adverse reactions to the smallpox vaccinations as they do any other claims within their normal policies and procedures. Vaccinated employees who experience adverse reactions would file claims following normal workers' compensation procedures. Workers' compensation will cover damages and medical treatments. The State will be responsible for employee salaries for the first 480 hours of lost time, after which workers' compensation will pick up all costs. The corresponding actuarial note analyzes the impact on the state health system.

Non-vaccinated employees and household members living in the homes of vaccinated employees who experience adverse reactions would file claims under this section of the new legislation. Because the burden of proof is on the parties submitting the claim, the Commission would not see an increase in research and time spent on investigating claims. Rather, the parties would allege damages, and the Commission would proceed with normal subsequent communications. Depending on the type of litigation required, the State may choose to settle the claim or proceed with a hearing before a deputy where testimony would be heard and a decision issued. The normal appeals process would also be in effect. The Commission cannot provide a "typical" cost of one hearing because of the different variables associated with individual issues that may come before them. **The Commission estimates the impact of the proposed legislation to be negligible.** The Attorney General's office would coordinate any settlement activities that may be required. Tort claims would be paid out of the budget of the State unit where the vaccinated employee is employed up to $150,000. Damages beyond $150,000, but no greater than the maximum of $500,000, are handled through the Office of State Budget and Management pursuant to G.S. 143-299.4. **Because it is not possible to estimate the number of adverse reactions to the smallpox vaccination, there is no way to determine the number of tort claims or settlements that may impact North Carolina.**

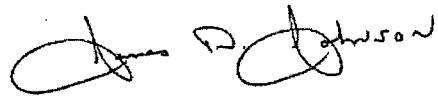
SOURCES OF DATA: North Carolina Industrial Commission; North Carolina Department of Health and Human Services; Center for Disease Control

TECHNICAL CONSIDERATIONS: Most of the statistical information about smallpox vaccine adverse reactions is based on data from two studies conducted in 1968. Adverse event rates in the United States today may be higher because there may be more people at risk from immune suppression (from cancer, cancer therapy, organ transplants, and illnesses such as HIV/AIDS) and eczema or atopic dermatitis. The outcome associated with adverse events may be less severe than previously reported because of advances in medical care and the strict screening process involved prior to allowing individuals to receive the vaccination. Rates may be lower for persons previously vaccinated.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt Stephanie Schmitt

APPROVED BY: James D. Johnson, Director Fiscal Research Division



DATE: April 17, 2003

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 273*

Short Title:	Adverse Reactions to Smallpox Vaccination.	(Public)
Sponsors:	Representatives Glazier, Warner, Lucas, Goodwin (Primary Sponsors); G. Allen, Bordsen, Carney, Dickson, England, McLawhorn, and Munford.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is a family member living in the home of a State employee who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the State employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is a family member living in the home of the person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 842
Committee Substitute Favorable 4/7/03
Third Edition Engrossed 4/22/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H842-CSRR-26 [v.4]

5/12/2003 7:53:49 PM

Short Title: Help America Vote Act Compliance. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SYSTEM FOR ALL NORTH CAROLINA ELECTIONS THAT COMPLIES WITH THE HELP AMERICA VOTE ACT AND TO HELP PREVENT DUPLICATE NAMES ON JURY LISTS..

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.

SECTION 2. G.S. 163-82.10(a) reads as rewritten:

"(a) ~~Application Form Becomes~~ Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application ~~form~~ form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the

official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of ~~the official~~ any paper hard copy registration records of ~~all~~ voters in the county and shall keep them in a place where they are secure."

SECTION 3. G.S. 163-82.10 is amended by adding a new section to read:

"(a1) Paperless, Instant Electronic Transfer. – The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document."

SECTION 4. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

SECTION 5. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security

number if the agency has those items because they are on a voter registration document."

SECTION 6. G.S. 163-82.11 reads as rewritten:

"**§ 163-82.11. Establishment of statewide computerized voter registration.**

(a) Statewide System as Official List. – The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. – The State Board of Elections shall develop and implement the system so that each county board of elections ~~can:~~ can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another ~~county;~~ county.

(2) Be notified automatically that a registered voter in its county has registered to vote in another ~~county; and~~ county.

(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. – Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its ~~own computer file of registered voters~~ records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall ~~transmit~~ enter through the computer ~~network~~ system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer ~~file.~~ system. ~~The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.~~

(e) Voter Registration List to County Jury Commissions. – The State Board of Elections shall make available, upon request, to the county jury commission of each county the voter registration list of that county. Included in the information furnished to the county jury commission under this subsection should be the drivers license number of each registered voter if it is available. The list provided to the jury commission shall have been matched with that of the Division of Motor Vehicles to eliminate duplicates."

SECTION 7.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of ~~rules~~ guidelines relating to computerized voter registration.**

The State Board of Elections shall make all ~~rules~~ guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These ~~rules~~ guidelines shall include provisions ~~for:~~ for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration ~~file;~~ file.

(2) Linking the central file through a network with computerized voter registration files in each of the ~~counties;~~ counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration ~~applications;~~applications.

(4) Protecting and securing the ~~data; and~~ data.

(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.

(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.

(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.

(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.

(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.

(10) Enabling the statewide system to provide upon request to the jury commission of each county a list of the registered voters of that county, with the drivers license of the voter if available, and with the list having been matched with that of the Division of Motor Vehicles to eliminate duplicates.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board."

SECTION 7.(b) G.S. 163-82.19 reads as rewritten:

"**§ 163-82.19. Voter registration at drivers license ~~offices.~~ offices; coordination on data interface.**

(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or

correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate ~~county~~ board of elections.

(b) Coordination on Data Interface. – The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002. The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002."

SECTION 7.(c) G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that ~~he~~ the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the

following year, and licensed to drive a motor vehicle ~~as of July 1, 1983, and~~ as of July 1 of each ~~biennium thereafter,~~ odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been canceled. The list shall contain the address and zip code of each driver, plus ~~his~~ the driver's date of ~~birth and~~ birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. The list so provided shall be used solely for jury selection and election record purposes and no other. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 7.(d) G.S. 9-2 reads as rewritten:

"**§ 9-2. Preparation of jury list; sources of names.**

(a) It shall be the duty of the jury commission ~~beginning July 1, 1981, (and each biennium thereafter)~~ on July 1 of every odd-numbered year to prepare a list of prospective jurors qualified under this Chapter to serve in the biennium beginning ~~January 1, 1982, (and each biennium thereafter).~~ on January 1 of the next year. Instead of providing a list for an entire biennium, the commission may prepare a list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the list, the jury commission shall use the State voter registration ~~records of~~ list for the county. The commission may use fewer than all the names from the voter list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c) ~~Effective July 1, 1983, the~~ The list of licensed drivers residing in each county, as supplied to the county by the Division of Motor Vehicles pursuant to G.S. 20-43.4, shall also be required as a source of names for use by the commission in preparing the jury list. The Division of Motor Vehicles shall match its list with that of the State Board of Elections to avoid duplicates pursuant to G.S. 20-43.4 before providing its list to the jury commission.

(d) When more than one source is used to prepare the jury list the jury commission shall take randomly a sample of names from the list of registered voters and each additional source used. The same percentage of names must be selected from each list. The names selected from the voter registration list shall be compared with the entire list of names, from the second source. Duplicate names shall be removed from the voter registration sample, and the remaining names shall then be combined with the sample of names selected from the second source to form the jury list. If more than two source lists are used, the same procedure must be used to remove duplicates.

(e) As an alternative to the procedure set forth in subsection (d), the jury commission may merge the entire list of names of each source used, remove the duplicate names, and randomly select the desired number of names to form the jury list.

(f) The jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous year but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the jury list.

(g) The ~~custodian of the appropriate election registration records in each county~~ State Board of Elections shall cooperate with the jury commission in its duty of compiling the list required by this section. The State Board of Elections shall match its list with that of the Division of Motor Vehicles to avoid duplicates pursuant to Article 7A of Chapter 163 of the General Statutes before providing its list to the jury commission. Nothing in this section authorizes the disclosure of addresses required to be kept confidential by G.S. 163-82.10(d).

(h) As used in this section 'random' or 'randomly' refers to a method of selection that results in each name on a list having an equal opportunity to be selected."

SECTION 8. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.7A. Voter education and information.**

(a) Posting The Information. – For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163-165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. – The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002."

SECTION 9. G.S. 163-82.4 reads as rewritten:

"**§ 163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number, or, if the applicant does not have a drivers license number the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement 'If you checked "no" in response to either of these questions, do not complete this form'.

If the voter fails to check the box set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election."

SECTION 10. G.S. 163-82.10A reads as rewritten:

"**§ 163-82.10A. Permanent voter registration numbers.**

~~Each county board of elections~~ The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections."

SECTION 11. G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines,

information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002, with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

(1) Types, makes, and models of voting systems approved for use in this State.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination of voting systems before use in an election.
(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 12. G.S. 163-165.4A reads as rewritten:

"**§ 163-165.4A. ~~Punch-Card ballots.~~Punch-card ballots and lever machines.**

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A 'lever machine voting system' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment."

SECTION 13. G.S. 163-182.1 reads as rewritten:

"**§ 163-182.1. Principles and rules for counting official ballots.**

(a) General Principles That Shall Apply. – The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in

that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

~~(b) Rules and Directions by State Board of Elections. The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.~~

(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

(1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

(2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

(3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 14. G.S. 163-166.01 reads as rewritten:

"**§ 163-166.01. Hours for voting.**

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

SECTION 14.1. G.S. 163-166.7 reads as rewritten:

"**§ 163-166.7. Voting procedures.**

(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If the chief judge states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. – If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.
(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.
(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.
(5) Voters leave the voting place promptly after voting.
(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.
(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.
(8) The registration records are kept secure.
(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.
(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.
(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election.
(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security,

confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 16. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:
a. A copy of a current and valid photo identification.
b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.
(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.
(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.
(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.
(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 17.(a) Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 8A.
"HAVA Administrative Complaint Procedure.

"**§ 163-91. Complaint Procedure.**

(a) The Board shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the Board is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the Board shall complete all of the following:
(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.
(2) Accept oral and written comments on the proposed complaint procedure.
(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."

SECTION 17.(b) G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(c) Full Exemptions. – This Chapter applies to every agency except:
...

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes."

SECTION 18. G.S. 163-256 reads as rewritten:

"**§ 163-256. Regulations of State Board of Elections.**

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of ~~G.S. 150B-9.~~ Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials."

SECTION 19. G.S. 163-245 reads as rewritten:

"**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited

on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 20. G.S. 163-247(3) reads as rewritten:

"(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, ~~held during the calendar year the application was received.~~ held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election."

SECTION 21. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.27. Help America Vote Act of 2002.**

As used in this Chapter, the term the 'Help America Vote Act of 2002' means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002."

SECTION 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 842 DATE 20 MAY 2003

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Ballantine
Sen.)

1 moves to amend the bill on page 13, line 29
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words
4 "the chief judge" and substituting
5 the words "a precinct official".
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 842:
Help America Vote Act Compliance.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Michaux and Stam
Date:	May 13, 2003	**Summary by:**	William R. Gilkeson
Version:	H842-CSRR-26[v.4]		Committee Co-Counsel

SUMMARY: This PCS for House Bill 842 is designed to comply with six provisions of the Help America Vote Act of 2002. HAVA requires that all States comply with these provisions regardless of whether they receive federal money. But HAVA's mandate only applies to federal elections. The bill essentially says to the State Board of Elections and other agencies: "Change North Carolina's election system to comply with HAVA, but make that system apply to all elections in NC, not just federal elections."

The requirements of HAVA deal with the following topics:

1. ***Statewide voter registration system.*** *Sec. 303(a) of HAVA.*
2. ***Standards for voting equipment.*** *Sec. 301 of HAVA.*
3. ***Provisional voting.*** *Sec. 302 of HAVA.*
4. ***I.D. for certain 1st time voters who register by mail.*** *Sec. 303(b) of HAVA.*
5. ***Administrative complaint procedure.*** *Sec. 402 of HAVA.*
6. ***Uniformed and Overseas Absentee Voters.*** *Title VII of HAVA.*

In addition, HB 842 contains 6 provisions not required by HAVA:

1. ***Paperless voter registration using electronically captured signatures.*** *Sections 3 & 4 of the bill.*
2. ***Exemption of drivers license number, social security number, and signature from public records law if on voter registration form.*** *Section 5 of the bill.*
3. ***State Board of Elections's duty to update its statewide voter registration list to reflect felons restored to citizenship after completing their sentences.*** *Section 6 of the bill.*
4. ***A phase-out by 2006 of lever machines.*** *Section 12 of the bill.* ***(HAVA provides funding for their replacement, but does not mandate their phase-out. HAVA also provides funding for phasing out punch-card equipment: N.C. decided in 2001 to phase out punch-cards.)***
5. ***A requirement that all voters sign a pollbook or other document before voting.*** *Section 14.1 of the bill.*
6. ***Provisions to provide the county jury commissions with the benefit of names that have been subjected to the computer matching process between the State Board of Elections and the DMV.*** *Secs. 6, 7.(a), 7.(c), and 7.(d).*

Statewide voter registration system

(Sections of the bill dealing with)

Sec. 2. – Makes the statewide VR system the official list for conduct of all elections. County paper document is a backup to statewide list. *(to comply with Sec. 303 of HAVA.)* Continues to require re-registration if move to another NC county. *Effective 1-1-04.*

Sec. 3 – **VR application may be paperless.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 4 – **Electronically captured signature of VR applicant suffices for signature requirement.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 5 – **Exempts DL # or SS # or signature from public records law if on VR application.** *(not to comply with HAVA but to prevent unintended consequences of loss of privacy.) Effective when it becomes law.*

Sec. 6 – Defining role of State Board and of county boards in maintaining VR. Requires State Board to update list to comply with HAVA. *(to comply with Sec. 303 of HAVA.)* **This section also does something not required by HAVA: It requires the State Board to update the statewide list to reflect the restoration of citizenship rights to ex-felons.** *Effective 1-1-04.*

Sec. 7(a) – Directs State Board to adopt guidelines for administering statewide VR system. *(to comply with Sec. 303 of HAVA.)* Exempts those guidelines from NC APA. *Effective 1-1-04.*

Sec. 7(b) – Directs DOT to coordinate with State Board in computer match-up of DMV and VR names. Requires DOT to enter into similar pact with U.S. Commissioner of Social Security. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Sec. 9 – Changes contents of the voter registration form. Adds DL # and SS #. Requires State Board issuance of unique identifier # if no DL or SS has been issued. Adds the verbatim citizenship and age questions required by HAVA. *(to comply with Sec. 303 of HAVA. Effective 1-1-04.*

Sec. 10 – Requires assignment of unique identifier to everyone. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Standards for voting equipment

(Sections of the bill dealing with)

Sec. 11 – Expands State Board's authority over approval and disapproval of voting systems, requires it to make those systems comply with HAVA. *(to comply with Sec. 301 of HAVA.) Effective 1-1-06.*

Sec. 12 – Amends the section enacted in 2001 that prohibited punchcards and gave current users till 2006 to get rid of them. **Adds lever machines to this abolition.** *(not an absolute requirement of HAVA, but logical if State accepts early-out HAVA money to replace punchcards and lever machines.) Effective when it becomes law.*

Sec. 13 -- Amends the vote-counting statute to require the SBOE to adopt procedures and standards for voting systems, including defining what is a vote and what will be counted as a vote on every voting system used in the State. *(to comply with Sec. 301 of HAVA.)* Exemption from NC APA. The bill specifies that optical scan systems must return an overvoted ballot to the voter for correction before the vote is accepted and counted. *Effective 1-1-06.*

Provisional Voting

(Sections of the bill dealing with)

Sec. 8. – Requires that certain HAVA-required information, including how to vote provisionally, be posted at voting place. *(to comply with Sec. 302(b) of HAVA.) Effective 1-1-04.*

Sec. 14 – If voting hours extended by court order, afterhours voters must vote by provisional ballot. *(to comply with Sec. 302 of HAVA.) Effective 1-1-04.*

Sec. 15 –Provisional voting omnibus section. Includes the right-to-know provision of HAVA, giving provisional voter a confidential, cost-free means of finding out whether the vote was counted and if not, why not. *(to comply with Sec. 301 of HAVA.) Effective 1-1-04.*

I.D. requirement for certain 1st time voters

(Section of the bill dealing with)

Sec. 16 – I.D. requirement for voters who registered by mail after 1-1-03 and are casting their first federal vote in NC and didn't put DL or SS # on VR form. *(to comply with Sec. 301(b) of HAVA.) Effective 1-1-04.*

Administrative Complaint Procedure

(Section of the bill dealing with)

Sec. 17 – Complaint procedure to remedy grievances for violation of HAVA. *(to comply with Sec. 402 of HAVA.)* The draft basically delegates to the State Board the creation of a complaint procedure to comply with HAVA.. It exempts the procedure from the APA. HAVA says the procedure must be open to any person who believes there's been a violation of HAVA, must be finally decided within 90 days unless complainant agrees to an extension, and must provide alternative dispute resolution if the normal means don't yield a result in 90 days. *Effective 1-1-04.*

Uniformed and Overseas Absentee Voting

(Sections of the bill dealing with)

Sec. 18 – Makes SBOE single office for info about uniformed and overseas voters. *(to comply with Sec. 702 of HAVA) Effective when it becomes law.*

Sec. 19 – Makes changes to UO voters provision, including removal of any start date for application. *(to comply with Sec. 706 of HAVA) Effective 1-1-04.*

Sec. 20 – Extends validity of UO absentee application through two general elections. *(to comply with Sec. 704 of HAVA) Effective 1-1-04.*

Signature requirement for all voters

(Section of the bill dealing with)

Sec. 14.1 – In a provision not required by HAVA, the House added a requirement that all voters must sign the pollbook, other voting record, or voter authorization document before voting. If the voter is unable to sign, a precinct official shall enter the voters name on the proper document before the voter votes. *(Not required by HAVA.)* ***Effective 1-1-04.***

Benefits of computer-matching names for jury commissions

(Sections of the bill dealing with)

Sec. 6, 7.(a), (c), & (d)– Requires both State Board of Elections and DMV to provide lists to county jury commissions, both after they have done their computer matches with each other. *(Not required by HAVA.)* **Requires Board of Elections and jury commissions to keep personal information from drivers license records confidential.** ***Effective 1-1-04.***

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

5-20-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Hunt	Office of State Personnel
[illegible]	NASW
E Ouzts	NCPIRG
P Pulley	Pulley Watson
Don McCorquodale	SAS
Ray Riffe	NC-AFL-CIO

VISITOR REGISTRATION SHEET

(1)

J-1 Committee — 5-20-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PRESTON HOWARD	MCIC
Jack Betts	Charlotte Observer
~~George Bardbury~~	SBOE
Peggy MAYNARD	
Joanne Stevens	Nursing
BOBBY RIDDLE	PFFPNC
Amy Dobson	NC State Watch
J BUSSIAN	NC Press Assn.
CHERIE POUCHER	Wake BOE
Johnnie McLean	St. Bd. of Elections
Bob Rauf	St. Bd. of Elections

VISITOR REGISTRATION SHEET

J-1 Comm — Name of Committee

5-20-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hall	Democracy North Carolina
Alan Skipper	NC Med Soc
Amy Jo Horne	NCMS
mike McLaughlin	NC Center for Public Policy Research
Meredith Flowe	NC Center for Public Policy Research
Hal Miller	NCACCT
Molly Ryan	NC School Boards Assoc.
Dana Stam	Rep. Stam
Aedis Watkins	SEANC
Katherine Joyce	NCASA
[illegible]	SBE
ANN [illegible]	OUHS

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 22, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 201	Name on Ballot.	Representative Gillespie
HB 787	Reporting by Federal PAC.	Representative Mitchell
HB 819	Campaigning Outside Polls.	Representative Ellis Representative Miller
HB 821	Filling Candidate Vacancy.	Representative Justus
HB 842	Help America Vote Act Compliance.	Representative Michaux, Jr. Representative Stam
HB 869	Reporting Absentee Votes.	Representative Gorman
HB 1120	H.S. Students as Pollworkers.	Representative Alexander

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

May 22, 2003

Minutes

Senator R.C. Soles, Vice Chair called the meeting to at 10:04 a.m. with ten members present. He introduced Pages, Regina Bell from Bessemer City, NC and Disheeka Powell from Tarboro, NC.

HB-201 (Name on Ballot) Committee Substitute was introduced by Senator R.C. Soles, Vice Chair. Bill sponsor, Representative Mitch Gillespie explained the bill would require the board of elections to notify every candidate how that candidate's name shall appear on the ballot prior to printing or programming or otherwise setting the ballot. Senator Tony Rand had a question about language in the bill. Rep. Gillespie answered the question. Mr. Gary Bartlett, NC Board of Elections spoke on the bill. Senator Rand offered an Amendment to the bill concerning the language. Senator soles said the bill would be displaced momentarily to study the language.

HB-821 (Filling Candidate Vacancy was introduced by Senator Soles. Bill sponsor, Representative Carolyn Justus explained the bill updated the statute on filling candidate vacancies. It would reflect a 2001 statutory rewrite. The bill would require the party committee choosing a replacement nominee to certify that name to only one board of elections, instead of several. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-869 (Reporting Absentee Votes) was introduced by Senator Soles. Bill sponsor, Representative Michael Gorman explained the bill. Senator Rand had a question. Rep. Gorman answered the question. Mr. Gary Bartlett, NC Board of Elections spoke on the bill. Senator Patrick Ballantine moved for a Favorable Report. Senator Rand made a motion to postpone the bill in Committee. Majority of members voted in favor of postponement. One voted no. The bill will be brought back to the next meeting.

HB-201 (Name on Ballot) was reintroduced by Senator Soles. Senator Rand offered Amendment to bill on Pg.1, line 27 and Pg. 2, line 2. Rep. Gillespie moved for adoption of Amendment. All members voted yes. Motion carried. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-842 (Help America Vote Act Compliance) Committee Substitute was introduced b Senator Soles. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Mickey Michaux explained that the bill is designed to comply with six provisions of the HAVA of 2002. See attached Bill Summary for further information. Staff Attorney, Bill Gilkeson explained changes to the bill. Senator's Vernon Malone and Charlie Albertson had questions. Mr. Bartlett answered the questions. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:58 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, May 28, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **201** Name on Ballot.

Draft Number:	PCS 30347
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **842** Help America Vote Act Compliance.

Draft Number:	PCS 60356
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

LAST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 201

Committee Substitute Favorable 4/14/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H201-PCS30347-RR-30

Short Title: Name on Ballot. (Public)

Sponsors:

Referred to:

March 4, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A REVIEW PROCEDURE TO ENSURE THAT CANDIDATES' NAMES APPEAR ON THE BALLOT IN ACCORDANCE WITH LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-165.5 reads as rewritten:

"**§ 163-165.5. Contents of official ballots.**

Each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot".

(2) The title of each office to be voted on and the number of seats to be filled in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall

establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

(4) Party designations in partisan ballot items.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 201 DATE 5-22-03

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~) RAND
Sen.)

moves to amend the bill on page 1, line 27 through page 2 line 2

( ) WHICH CHANGES THE TITLE

by rewriting the underline language to read:

"The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names shall appear on the official ballot in accordance with this subdivision."

SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 201:
Name on Ballot

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Gillespie
Date:	May 22, 2003	**Summary by:**	William R. Gilkeson
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 201 would require the board of elections to notify every candidate how that candidate's name shall appear on the ballot prior to printing or programming or otherwise setting the ballot. Effective when it becomes law.***

CURRENT LAW: Ballot preparation is the responsibility of the local board of elections. That preparation is to be done in compliance with statute and rule. G.S. 163-165.5 specifies the contents of the ballot for elections. It says, among other things, that each ballot is to contain the names of the candidates as they appear on their notice of candidacy or qualifying petition. When stating the name, no title, appendage, or appellation indicating rank, status, or position is to be printed on the official ballot in connection with the candidate's name. Candidates may use the title Mr., Mrs., Miss, or Ms. Nicknames are permitted, if used in the notice of candidacy or qualifying petition, and in accordance with rule.

BILL ANALYSIS: House Bill 201 would require the appropriate board of elections to notify every candidate how that candidate's name shall appear on the ballot prior to printing or programming or otherwise setting the ballot in accordance with G.S. 163-165.5(3). The State Board is directed to adopt procedures to administer this provision.

H201-SMRR03-1

The original version of this summary was written by Erika Churchill.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 201

Short Title:	Name on Ballot.	(Public)
Sponsors:	Representatives Gillespie and Setzer.	
Referred to:	Election Law and Campaign Finance Reform.	

March 4, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE BOARD OF ELECTIONS TO NOTIFY EACH CANDIDATE BEFORE THE BALLOT IS PRINTED HOW THAT CANDIDATE'S NAME WILL APPEAR ON THE BALLOT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-165.5 reads as rewritten:

"**§ 163-165.5. Contents of official ballots.**

Each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot".

(2) The title of each office to be voted on and the number of seats to be filled in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. Before any ballot is distributed, every candidate on the ballot shall be notified how that candidate's name

shall appear on the ballot. The State Board of Elections shall designate which boards of elections shall give that notice to which candidates.

(4) Party designations in partisan ballot items.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 821

Short Title:	Filling Candidate Vacancy.	(Public)
Sponsors:	Representatives Justus; and Alexander.	
Referred to:	Election Law and Campaign Finance Reform.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE PROCESS OF FILLING A VACANCY ON A PARTY TICKET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney	Appropriate district executive committee of political party in which vacancy occurs

State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, ~~charged with the duty of printing the ballots on which the name is to appear.~~ that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 821:
Filling Candidate Vacancy

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Justus
Date:	May 22, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***HB 821 updates the statute on filling candidate vacancies. It would reflect a 2001 statutory rewrite. The bill would require the party committee choosing a replacement nominee to certify that name to only one board of elections, instead of several.*** *Effective when it becomes law.*

CURRENT LAW: Currently, when a vacancy occurs on a political party's ticket, the appropriate party committee chooses a replacement nominee and certifies that person's name to the board of elections that prints the ballot on which the candidate's name is to appear. That used to be the State Board of Elections for multi-county offices and the county board of elections for single-county offices. In 2001, however, the General Assembly rewrote the ballot laws, giving county boards of elections the duty to print all ballots. The candidate vacancy statute was inadvertently left unchanged in that rewrite.

The result of the oversight is that when a party chooses a replacement to fill a vacancy on the ticket for a multi-county congressional or legislative seat, the party must certify to name of the candidate to every county board of elections in the district. That would be the requirement of the statute if it is read literally. In addition, the party may feel the need to certify the nominee to the State Board of Elections, since that is where the certification used to go. All this filing must sometimes be done in a very short time-frame, since vacancies sometimes occur just before the ballot is being printed, or even just before the election.

BILL ANALYSIS: House Bill 821 changes the candidate vacancy statute to require that the party certify the replacement nominee to only one board of elections. That is the board that under the new G.S. 163-182.4 has responsibility for canvassing and certifying the results of election for the office in question.

Here is a copy of the new statute, showing which board of elections it would require replacement candidate certifications to go:

§ 163-182.4. Jurisdiction for certain ballot items.

(a) Jurisdiction of County Board of Elections. – As used in this Article, the county board of elections shall have jurisdiction over the following:

(1) Offices of that county, including clerk of superior court and register of deeds.
(2) Membership in either house of the General Assembly from a district lying entirely within that county.
(3) Offices of municipalities, unless the municipality has a valid board of election.
(4) Referenda in which only residents of that county are eligible to vote.

(b) Jurisdiction of State Board of Elections. – As used in this Article, the State Board of Elections shall have jurisdiction over the following:

(1) National offices.
(2) State offices.
(3) District offices (including General Assembly seats) in which the district lies in more than one county.
(4) Superior court judge, district court judge, and district attorney, regardless of whether the district lies entirely in one county or in more than one county.
(5) Referenda in which residents of more than one county are eligible to vote.

(c) For the purposes of this Article, having jurisdiction shall mean that the appropriate board shall do all of the following with regard to the ballot item:

(1) Canvass for the entire electorate for the ballot item.
(2) Prepare abstracts or composite abstracts for the entire electorate for the ballot item.
(3) Issue certificates of nomination and election. (2001-398, s. 3.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 869

Short Title:	Reporting Absentee Votes.	(Public)
Sponsors:	Representatives Gorman; and Blust.	
Referred to:	Election Law and Campaign Finance Reform.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO ADVANCE THE DATE FOR REPORTING MAILED ABSENTEE AND ONE-STOP VOTES BY PRECINCT FROM 2006 TO 2004 FOR THOSE COUNTIES CAPABLE OF DOING SO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-132.5G reads as rewritten:

"**§ 163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop. The county board shall not be required to report absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election. Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year."

SECTION 2. This act is effective when it becomes law.

LAST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 842
Committee Substitute Favorable 4/7/03
Third Edition Engrossed 4/22/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H842-PCS60356-RR-26

Short Title: Help America Vote Act Compliance. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SYSTEM FOR ALL NORTH CAROLINA ELECTIONS THAT COMPLIES WITH THE HELP AMERICA VOTE ACT AND TO HELP PREVENT DUPLICATE NAMES ON JURY LISTS.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.

SECTION 2. G.S. 163-82.10(a) reads as rewritten:

"(a) ~~Application Form Becomes~~ Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application ~~form~~ form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the

official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of ~~the official~~ any paper hard copy registration records of ~~all~~ voters in the county and shall keep them in a place where they are secure."

SECTION 3. G.S. 163-82.10 is amended by adding a new subsection to read:

"(a1) Paperless, Instant Electronic Transfer. – The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document."

SECTION 4. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

SECTION 5. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document."

SECTION 6. G.S. 163-82.11 reads as rewritten:

"**§ 163-82.11. Establishment of statewide computerized voter registration.**

(a) Statewide System as Official List. – The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. – The State Board of Elections shall develop and implement the system so that each county board of elections ~~can:~~ can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another ~~county;~~ county.

(2) Be notified automatically that a registered voter in its county has registered to vote in another ~~county; and~~ county.

(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. – Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its ~~own computer file of registered voters~~ records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall ~~transmit~~ enter through the computer ~~network~~ system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer ~~file.~~ system. ~~The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.~~

(e) Cooperation on List for Jury Commissions. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records."

SECTION 7.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of ~~rules~~ guidelines relating to computerized voter registration.**

The State Board of Elections shall make all ~~rules~~ guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These ~~rules~~ guidelines shall include provisions ~~for:~~ for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration ~~file;~~ file.

(2) Linking the central file through a network with computerized voter registration files in each of the ~~counties;~~ counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration ~~applications;~~applications.

(4) Protecting and securing the ~~data; and~~ data.

(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.

(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.

(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.

(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.

(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.

(10) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board."

SECTION 7.(b) G.S. 163-82.19 reads as rewritten:

"**§ 163-82.19. Voter registration at drivers license ~~offices.~~ offices; coordination on data interface.**

(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7

may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate ~~county~~ board of elections.

(b) Coordination on Data Interface. – The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002. The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002."

SECTION 7.(c) G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that ~~he~~ the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle ~~as of July 1, 1983, and~~ as of July 1

of each ~~biennium thereafter,~~ odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been canceled. The list shall contain the address and zip code of each driver, plus ~~his~~ the driver's date of ~~birth and~~ birth, sex, and driver's license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statute."

SECTION 7.(d) G.S. 9-2 reads as rewritten:

"**§ 9-2. Preparation of jury list; sources of names.**

(a) It shall be the duty of the jury commission ~~beginning July 1, 1981, (and each biennium thereafter)~~ on July 1 of every odd-numbered year to prepare a list of prospective jurors qualified under this Chapter to serve in the biennium beginning ~~January 1, 1982, (and each biennium thereafter).~~ on January 1 of the next year. Instead of providing a list for an entire biennium, the commission may prepare a list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the list, the jury commission shall use the ~~voter registration records of the county.~~ list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission may use fewer than all the names from the ~~voter~~ list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

~~(c) Effective July 1, 1983, the list of licensed drivers residing in each county, as supplied to the county by the Division of Motor Vehicles pursuant to G.S. 20-43.4, shall also be required as a source of names for use by the commission in preparing the jury list.~~

~~(d) When more than one source is used to prepare the jury list the jury commission shall take randomly a sample of names from the list of registered voters and each additional source used. The same percentage of names must be selected from each list. The names selected from the voter registration list shall be compared with the entire list of names, from the second source. Duplicate names shall be removed from the voter registration sample, and the remaining names shall then be combined with the sample of~~

~~names selected from the second source to form the jury list. If more than two source lists are used, the same procedure must be used to remove duplicates.~~

(e) ~~As an alternative to the procedure set forth in subsection (d), the~~ The jury commission ~~may~~ shall merge the entire list of names of each source ~~used,~~ used ~~remove the duplicate names,~~ and randomly select the desired number of names to form the jury list.

(f) The jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous year but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the jury list.

~~(g) The custodian of the appropriate election registration records in each county shall cooperate with the jury commission in its duty of compiling the list required by this section.~~

(h) As used in this section 'random' or 'randomly' refers to a method of selection that results in each name on a list having an equal opportunity to be selected."

SECTION 8. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.7A. Voter education and information.**

(a) Posting the Information. – For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163-165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. – The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002."

SECTION 9. G.S. 163-82.4 reads as rewritten:

"**§ 163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such

requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(4).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement 'If you checked "no" in response to either of these questions, do not complete this form.'

If the voter fails to answer the question set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election."

SECTION 10. G.S. 163-82.10A reads as rewritten:

"**§ 163-82.10A. Permanent voter registration numbers.**

~~Each county board of elections~~ The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections."

SECTION 11. G.S. 163-165.7 reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct

elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

(1) Types, makes, and models of voting systems approved for use in this State.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination of voting systems before use in an election.
(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 12. G.S. 163-165.4A reads as rewritten:

"**§ 163-165.4A. ~~Punch-Card ballots.~~Punch-card ballots and lever machines.**

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A 'lever machine voting system' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General

Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment."

SECTION 13. G.S. 163-182.1 reads as rewritten:

"**§ 163-182.1. Principles and rules for counting official ballots.**

(a) General Principles That Shall Apply. – The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

~~(b) Rules and Directions by State Board of Elections. – The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.~~

(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

(1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
(2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
(3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 14. G.S. 163-166.01 reads as rewritten:

"**§ 163-166.01. Hours for voting.**

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

SECTION 14.1. G.S. 163-166.7 reads as rewritten:

"**§ 163-166.7. Voting procedures.**

(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. – If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order,

impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.

(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election.

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall

establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 16. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee

ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 17.(a) Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 8A.

"HAVA Administrative Complaint Procedure.

"**§ 163-91. Complaint procedure.**

(a) The State Board of Elections shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the State Board of Elections is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the State Board of Elections shall complete all of the following:

(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.

(2) Accept oral and written comments on the proposed complaint procedure.

(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."

SECTION 17.(b) G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(c) Full Exemptions. – This Chapter applies to every agency except:

...

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes."

SECTION 18. G.S. 163-256 reads as rewritten:

"**§ 163-256. Regulations of State Board of Elections.**

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of ~~G.S. 150B-9.~~ Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials."

SECTION 19. G.S. 163-245 reads as rewritten:

"**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 20. G.S. 163-247(3) reads as rewritten:

"(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, ~~held during the calendar year the application was received.~~ held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election."

SECTION 21. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.27. Help America Vote Act of 2002.**

As used in this Chapter, the term 'Help America Vote Act of 2002' means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002."

SECTION 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.

HOUSE BILL 842:
Help America Vote Act Compliance.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Michaux and Stam
Date:	May 22, 2003	**Summary by:**	William R. Gilkeson
Version:	H842-CSRR-26[v.5]		Committee Co-Counsel

SUMMARY: This PCS for House Bill 842 is designed to comply with six provisions of the Help America Vote Act of 2002. HAVA requires that all States comply with these provisions regardless of whether they receive federal money. But HAVA's mandate only applies to federal elections. The bill essentially says to the State Board of Elections and other agencies: "Change North Carolina's election system to comply with HAVA, but make that system apply to all elections in NC, not just federal elections."

The requirements of HAVA deal with the following topics:

1. ***Statewide voter registration system.*** *Sec. 303(a) of HAVA.*
2. ***Standards for voting equipment.*** *Sec. 301 of HAVA.*
3. ***Provisional voting.*** *Sec. 302 of HAVA.*
4. ***I.D. for certain 1st time voters who register by mail.*** *Sec. 303(b) of HAVA.*
5. ***Administrative complaint procedure.*** *Sec. 402 of HAVA.*
6. ***Uniformed and Overseas Absentee Voters.*** *Title VII of HAVA.*

In addition, HB 842 contains 6 provisions not required by HAVA:

1. ***Paperless voter registration using electronically captured signatures.*** *Sections 3 & 4 of the bill.*
2. ***Exemption of drivers license number, social security number, and signature from public records law if on voter registration form.*** *Section 5 of the bill.*
3. ***State Board of Elections's duty to update its statewide voter registration list to reflect felons restored to citizenship after completing their sentences.*** *Section 6 of the bill.*
4. ***A phase-out by 2006 of lever machines.*** *Section 12 of the bill.* ***(HAVA provides funding for their replacement, but does not mandate their phase-out. HAVA also provides funding for phasing out punch-card equipment: N.C. decided in 2001 to phase out punch-cards.)***
5. ***A requirement that all voters sign a pollbook or other document before voting.*** *Section 14.1 of the bill.*
6. ***Provisions to provide the county jury commissions with the benefit of names that have been subjected to the computer matching process between the State Board of Elections and the DMV.*** *Secs. 6, 7.(a), 7.(c), and 7.(d).*

Statewide voter registration system

(Sections of the bill dealing with)

Sec. 2. – Makes the statewide VR system the official list for conduct of all elections. County paper document is a backup to statewide list. *(to comply with Sec. 303 of HAVA.)* Continues to require re-registration if move to another NC county. *Effective 1-1-04.*

Sec. 3 – **VR application may be paperless.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 4 – **Electronically captured signature of VR applicant suffices for signature requirement.** *(Not required by HAVA but logical extension of recent developments.) Effective when it becomes law.*

Sec. 5 – **Exempts DL # or SS # or signature from public records law if on VR application.** *(not to comply with HAVA but to prevent unintended consequences of loss of privacy.) Effective when it becomes law.*

Sec. 6 – Defining role of State Board and of county boards in maintaining VR. Requires State Board to update list to comply with HAVA. *(to comply with Sec. 303 of HAVA.)* **This section also does something not required by HAVA: It requires the State Board to update the statewide list to reflect the restoration of citizenship rights to ex-felons.** *Effective 1-1-04.*

Sec. 7(a) – Directs State Board to adopt guidelines for administering statewide VR system. *(to comply with Sec. 303 of HAVA.)* Exempts those guidelines from NC APA. *Effective 1-1-04.*

Sec. 7(b) – Directs DOT to coordinate with State Board in computer match-up of DMV and VR names. Requires DOT to enter into similar pact with U.S. Commissioner of Social Security. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Sec. 9 – Changes contents of the voter registration form. Adds DL # and SS #. Requires State Board issuance of unique identifier # if no DL or SS has been issued. Adds the verbatim citizenship and age questions required by HAVA. *(to comply with Sec. 303 of HAVA. Effective 1-1-04.*

Sec. 10 – Requires assignment of unique identifier to everyone. *(to comply with Sec. 303 of HAVA.) Effective 1-1-04.*

Standards for voting equipment

(Sections of the bill dealing with)

Sec. 11 – Expands State Board's authority over approval and disapproval of voting systems, requires it to make those systems comply with HAVA. *(to comply with Sec. 301 of HAVA.) Effective 1-1-06.*

Sec. 12 – Amends the section enacted in 2001 that prohibited punchcards and gave current users till 2006 to get rid of them. **Adds lever machines to this abolition.** *(not an absolute requirement of HAVA, but logical if State accepts early-out HAVA money to replace punchcards and lever machines.) Effective when it becomes law.*

Sec. 13 -- Amends the vote-counting statute to require the SBOE to adopt procedures and standards for voting systems, including defining what is a vote and what will be counted as a vote on every voting system used in the State. *(to comply with Sec. 301 of HAVA.)* Exemption from NC APA. The bill specifies that optical scan systems must return an overvoted ballot to the voter for correction before the vote is accepted and counted. *Effective 1-1-06.*

Provisional Voting

(Sections of the bill dealing with)

Sec. 8. – Requires that certain HAVA-required information, including how to vote provisionally, be posted at voting place. *(to comply with Sec. 302(b) of HAVA.) Effective 1-1-04.*

Sec. 14 – If voting hours extended by court order, afterhours voters must vote by provisional ballot. *(to comply with Sec. 302 of HAVA.) Effective 1-1-04.*

Sec. 15 –Provisional voting omnibus section. Includes the right-to-know provision of HAVA, giving provisional voter a confidential, cost-free means of finding out whether the vote was counted and if not, why not. *(to comply with Sec. 301 of HAVA.) Effective 1-1-04.*

I.D. requirement for certain 1st time voters

(Section of the bill dealing with)

Sec. 16 – I.D. requirement for voters who registered by mail after 1-1-03 and are casting their first federal vote in NC and didn't put DL or SS # on VR form. *(to comply with Sec. 301(b) of HAVA.) Effective 1-1-04.*

Administrative Complaint Procedure

(Section of the bill dealing with)

Sec. 17 – Complaint procedure to remedy grievances for violation of HAVA. *(to comply with Sec. 402 of HAVA.)* The draft basically delegates to the State Board the creation of a complaint procedure to comply with HAVA.. It exempts the procedure from the APA. HAVA says the procedure must be open to any person who believes there's been a violation of HAVA, must be finally decided within 90 days unless complainant agrees to an extension, and must provide alternative dispute resolution if the normal means don't yield a result in 90 days. *Effective 1-1-04.*

Uniformed and Overseas Absentee Voting

(Sections of the bill dealing with)

Sec. 18 – Makes SBOE single office for info about uniformed and overseas voters. *(to comply with Sec. 702 of HAVA) Effective when it becomes law.*

Sec. 19 – Makes changes to UO voters provision, including removal of any start date for application. *(to comply with Sec. 706 of HAVA) Effective 1-1-04.*

Sec. 20 – Extends validity of UO absentee application through two general elections. *(to comply with Sec. 704 of HAVA) Effective 1-1-04.*

Signature requirement for all voters

(Section of the bill dealing with)

Sec. 14.1 – In a provision not required by HAVA, the House added a requirement that all voters must sign the pollbook, other voting record, or voter authorization document before voting. If the voter is unable to sign, a precinct official shall enter the voters name on the proper document before the voter votes. *(Not required by HAVA.)* ***Effective 1-1-04.***

Benefits of computer-matching names for jury commissions

(Sections of the bill dealing with)

Sec. 6, 7.(a), (c), & (d)– Requires DMV, with SBOE cooperation, to do a computer match of the entire list of registered voters and persons with drivers license records to eliminate duplicates. The DMV would send a merged list for each county to the county jury commissions. The jury commission would pick a jury pool randomly from the merged list. A jury would still have to option, as now, of merging in another list. *(Not required by HAVA.)* **Requires SBOE and jury commissions to keep personal information from drivers license records confidential.** ***Effective 1-1-04.***

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

5-27-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay Robertson	AP
Gary O. Bartlett	SBE
Bob Runft	SBE
Johnnie McLean	" " "
Don Wright	"
Cherie G. Poucher	Wake Co. BOE
Dan Maerten	MAP Petro
Bill Weatherspoon	NC Petro Council
Gary Harris	NC Petroleum Mkts.
Kim Hubbard	NCLM
Kathy D. Daniel	DOT / DMV - Driver License

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

5-22-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
RAY RIFFE	NC AFL-CIO
Elizabeth Dalton	Bone's Associates
Mike McLaughlin	NC Center for Public Policy Research
Meredith A. Howe	NC Center for Public Policy Research
Hal Miller	NCACCT
Kevin Leonard	WSR

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

REVISED NOTICE / HB-787 & HB-819 REMOVED

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 29, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB-65	Autopsy Photos Not Public Record	Rep. Ray
HB-807	Elective Share Amendments	Rep. Culpepper
HB-869	Reporting Absentee Votes	Rep. Gorman
HB-916	First Responders Vaccination Program	Rep. Brubaker
HB-1114	School Volunteer Records Are Confidential	Rep. Saunders
HB-1120	H.S. Students As Pollworkers	Rep. Alexander
SB-760	Local Campaign Finance Reform	Sen. Gulley

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

May 29, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting together at 10:13 a.m. with eleven members present. He introduced Pages Bryan Lynch and Josh Smith both from Gastonia, NC\

HB-807 (Elective Share Amendments) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Bill Culpepper explained the changes are to Article 1A of Chapter 30 of the General Statutes, which governs the right of a surviving spouse to dissent from the deceased spouse's will and take an elective share instead. See attached Bill Summary for further information. Mr. Bill Craft, Attorney for the Member Legislative Bar Association spoke on the bill. Senator Charlie Albertson had a question. Mr. Craft answered the question. Senator Albertson moved for a Favorable Report. Senator Wib Gulley seconded the motion. All members voted yes. Motion carried.

HB-916 (First Responders Vaccination Program) was introduced by Senator Clodfelter. Bill sponsor, Representative Harold Brubaker explained the bill established a first responders vaccination program for emergency personnel who are likely to be the first responders deployed to disaster locations who may be exposed to infectious diseases. See attached Bill Summary for further information. Senator Wib Gulley has a question. Rep. Brubaker answered the question. Senator David Hoyle moved for an Amendment to the bill, and moved for adoption of the Amendment and that it be engrossed into a Committee Substitute. All members voted yes. Motion carried. See attached Amendment. Senator Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

HB-869 (Reporting Absentee Votes) was introduced by Senator Clodfelter. Bill sponsor, Representative Michael Gorman explained the bill would amend a recently enacted statute requiring counties to report absentee voting data by precinct. See attached Bill Summary for further information. Senator David Hoyle moved for a Favorable Report. Senator Charlie Albertson seconded the motion. All members voted yes. Motion carried.

HB-65 (Autopsy Photos Not Public Record) Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter asked Staff Attorney, Walker Reagan to explain changes to the bill. Bill sponsor, Representative Karen Ray spoke on the changes and asked members to consider a Favorable Report. Senator's Ham Horton, Charlie Albertson, Wib Gulley, Phillip Berger and Jeanne Lucas had questions. Mr. Jon Bussion, Attorney NC Press Association, Mr. Rob Lamme, Liaison for DHHS and Staff Attorney, Karen Cochran-Brown spoke on the bill and answered the questions. Senator Ham Horton moved for a Favorable Report. All members voted yes. Motion carried.

SB-760 (Local Campaign Finance Reform) Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley moved for adoption of the Committee Substitute. Senator Jeanne Lucas seconded. All members voted yes. Motion carried. Bill Sponsor, Senator Wib Gulley explained the bill would provide that photographs and video and audio recordings of official autopsies are not public records. See attached Bill Summary for further information. Senator's Phillip Berger, Charlie Albertson and Jeanne Lucas had questions. Senator Gulley answered the questions. Senator Clodfelter said the bill would be displaced at this time and would be heard at a future meeting.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, May 29, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **869** Reporting Absentee Votes.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, June 03, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **65** Autopsy Photos Not Public Record.

Draft Number:	PCS 30354
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **916** First-Responders Vaccination Program.

Draft Number:	PCS 50289
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **807** Elective Share Amendments.

Draft Number:	PCS 70331
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

LAST Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 807

Committee Substitute Favorable 4/23/03

Committee Substitute #2 Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H807-CSRU-42 [v.1]

5/28/2003 1:22:50 PM

Short Title: Elective Share Amendments. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW ESTABLISHING THE ELECTIVE SHARE OF A DECEDENT'S SURVIVING SPOUSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-3.1 reads as rewritten:

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in ~~G.S. 30-3.2(c),~~G.S. 30-3.2(4), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. – Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that ~~such taxes are increased~~

~~because~~the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions."

SECTION 2. G.S. 30-3.2 reads as rewritten:

"**§ 30-3.2. Definitions.**

The following definitions apply in this Article:

(1) "Code" means the Internal Revenue Code in effect at the time of the decedent's death.

(2) "Death taxes" means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(3) "Nonadverse trustee" ~~means a trustee who would be deemed nonadverse under section 672 of the Code.~~ means:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(4) "Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:

a. All property to which the decedent had legal and equitable title immediately prior to death;

b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint

tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.

f. Any ~~donative transfers~~gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:

1. Any gifts within the annual exclusion provisions of section 2503 of the Code;
2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and
3. Any gifts made prior to marriage;

g. Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."

SECTION 3. G.S. 30-3.3(a) reads as rewritten:

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:

(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;

(7) ~~The~~ Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, ~~where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse; and~~if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;

b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;

c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and

In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and

(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent."

SECTION 4. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in

connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. ~~To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;~~An interest described in G.S. 30-3.3(a)(7) that shall be valued as if

the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. – The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. – The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. – If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division."

SECTION 5. G.S. 30-3.6 is amended by adding a new subsection to read:

"(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000 under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedent's dying on or after January 1, 2001."

SECTION 6. Sections 5 and 6 of this act are effective when this act becomes law. The remainder of this act becomes effective January 1, 2004, and applies to estates of decedents dying on or after that date.

HOUSE BILL 807:
Elective Share Amendments.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Culpepper
Date:	May 29, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H807-CSRU-42		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 807 makes changes to Article 1A of Chapter 30 of the General Statutes, which governs the right of a surviving spouse to dissent from the deceased spouse's will and take an elective share instead.***

SECTION 1: Amends G.S. 30-3.1(a) to correct an incorrect citation. It also amends subsection (c) of that statute to clarify the method of determining the effect of death taxes on the calculation of Total Net Assets available for the elective share. This is not intended to change the results of the calculation.

SECTION 2: Amends G.S. 30-3.2(3), the definition of "nonadverse trustee," by eliminating the reference to an Internal Revenue Code section for the definition, and instead spelling out the definition. This clarifies that a corporate trustee qualifies, as well as an individual who does not possess a beneficial interest, or who serves at the pleasure of the surviving spouse. It also amends subdivision (4) f. of that statute. Subdivision 4 is the definition of "total net assets," which is the amount upon which the elective share is calculated. The amendment substitutes "gifts" for the phrase "donative transfers" to clarify that charitable donations are not included as part of total net assets.

SECTION 3: Amends G.S. 30-3.3(a)(7), part of the definition of "property passing to surviving spouse," to clarify that the entire value of certain trusts is includable in the definition, and thus includable in the calculation of net asset value.

SECTION 4: Amends G.S. 30-3.4(b) and (e). Subsection (b) is the six months statute of limitations for making the election. The amendment provides that the six months runs from the filing of each will. Thus, the spouse who does not elect because he or she thought the will was adequate will not be taken by surprise if a later will is discovered after the six months has run. Subsection (e) contains a clarifying amendment as to the spousal trusts to be included as passing to the surviving spouse, for purposes of G.S. 30-3.3(a)(7). (See Section 3 above.)

SECTION 5: Amends G.S. 30-3.6 by adding a new subsection (c). G.S. 30-3.6 specifies when a surviving spouse waives her right to an elective share. The amendment makes it clear that a written waiver executed prior to January 1, 2001, when the predecessor to Article 1A was in force, is still valid. A written waiver is typically a prenuptial agreement.

SECTION 6: Sections 5 and 6 of this act are effective when the act becomes law. The remainder of the act is effective January 1, 2004, and applies to estates of persons dying on or after that date.

This summary was substantially contributed to by Steve Rose, Counsel to the House Judiciary IV Committee.

H807-SMRU-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 807

Short Title:	Elective Share Amendments.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary IV.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW ESTABLISHING THE ELECTIVE SHARE OF A DECEDENT'S SURVIVING SPOUSE AND TO REPEAL THE RIGHT OF A SURVIVING SPOUSE TO ELECT A LIFE INTEREST IN LIEU OF AN INTESTATE SHARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-3.1 reads as rewritten:

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in ~~G.S. 30-3.2(c),~~G.S. 30-3.2(4), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. – Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that ~~such taxes are increased because~~the assets received by the surviving spouse do not qualify for the federal estate

tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions."

SECTION 2. G.S. 30-3.2 reads as rewritten:

"**§ 30-3.2. Definitions.**

The following definitions apply in this Article:

(1) "Code" means the Internal Revenue Code in effect at the time of the decedent's death.

(2) "Death taxes" means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(3) "Nonadverse trustee" ~~means a trustee who would be deemed nonadverse under section 672 of the Code.~~ means:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(4) "Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:

a. All property to which the decedent had legal and equitable title immediately prior to death;

b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.

f. Any ~~donative transfers~~gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:

1. Any gifts within the annual exclusion provisions of section 2503 of the Code;
2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and
3. Any gifts made prior to marriage;

g. Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."

SECTION 3. G.S. 30-3.3(a) reads as rewritten:

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:

(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of

decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;

(7) ~~The~~ Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, ~~where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse; and~~if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;

b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;

c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and

In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and

(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent."

SECTION 4. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of

the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. ~~To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;~~An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. – The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. – The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. – If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so,

the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division."

SECTION 5. G.S. 30-3.6 is amended by adding a new subsection to read:

"(c) A written waiver executed prior to January 1, 2001, that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes, is effective to waive that spouse's right of elective share under this Article for estates of decedent's dying on or after January 1, 2001."

SECTION 6. G.S. 29-30 is repealed.

SECTION 7. This act becomes effective January 1, 2004, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 916

Committee Substitute Favorable 4/28/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H916-PCS50289-RU-43

Short Title: First Responders Vaccination Program. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VACCINATION PROGRAM FOR FIRST RESPONDERS TO TERRORIST INCIDENTS, CATASTROPHIC OR NATURAL DISASTERS, OR EMERGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-485. Vaccination program established; definitions.**

(a) The Department and local health departments shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination, and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary, as determined by the State Health Director.

(b) Participation in the vaccination program is voluntary by the first responders, except for first responders who are classified as having "occupational exposure" to bloodborne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 C.F.R. § 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(c) Nothing in this section shall require first responders, except first responders for whom the vaccination program is not voluntary as set forth in subsection (b) of this section, who present a written statement from a licensed physician indicating that a vaccine is medically contraindicated for the first responder or who sign a written statement that the administration of a vaccination conflicts with the first responder's religious tenets, to receive a vaccine.

(d) In the event of a vaccine shortage, the State Public Health Director, in consultation with the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders deployed to a disaster location.

(e) The Department shall notify first responders of the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(f) As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Bioterrorism' means the intentional use of any microorganism, virus, infectious substance, biological product, or biological agent as defined in G.S. 130A-479 that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product to cause or attempt to cause death, disease, or other biological malfunction in any living organism.

(2) 'Disaster location' means any geographical location where a bioterrorism attack, terrorist incident, catastrophic or natural disaster, or emergency occurs.

(3) 'First responders' means State and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or emergencies."

SECTION 2. Nothing in this act obligates the General Assembly to appropriate State funds for the implementation of this act. The Department of Health and Human Services shall work with local employers to access, when available, federal funds to implement a vaccination program for first responders as enacted in Section 1 of this act.

SECTION 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 916 (1st Edition)

SHORT TITLE: Prevent Personal and Workplace Violence

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
REVENUES					
EXPENDITURES	Exact estimate not available, but impact could be large on courts and county jails.				
POSITIONS: (cumulative)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts; local governments.

EFFECTIVE DATE: December 1, 2003

BILL SUMMARY: Enacts new GS Ch. 50C as title indicates. Allows victims of attempted injury, nonconsensual sexual conduct, stalking, or threats to file a petition for no-contact order without paying any filing fee. Specifies venue and procedure for civil actions seeking no-contact order, including provisions related to emergency orders. Provides special evidentiary rules. Limits defenses and grounds for denial of order. No-contact order requires respondent to stay away from petitioner. A temporary order may be for up to 21 days; a permanent order lasts for up to a year. Allows warrantless arrest for violation if officer has probable cause. Requires law enforcement agencies to maintain data regarding no-contact orders. Effective Dec. 1, 2003.

ASSUMPTIONS AND METHODOLOGY:
The Administrative Office of the Courts (AOC) estimates that this bill could have a significant impact on the number of civil cases. Based on charges for stalking (932), communicating threats (28,468), assaults (69,994), and non-consensual sex (1,554), this bill could produce a large volume of filings for protective orders. Because some victims who currently seek relief under 50B would choose to use the proposed 50C instead, there will be greater use of civil court resources. This bill provides for a contempt hearing in the event of

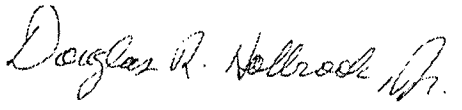
a violation, rather than a criminal penalty. In a contempt proceeding, a defendant is entitled to notice, counsel, and jury trial prior to being sentenced.

Because contempt sentences are housed in county jails, this bill has no impact on the state prison population. Under civil contempt, defendants may be held as long as the violation continues up to 90 days at one time. The impact on local jails cannot be determined because there is no information on how frequently victims would request orders under this act, nor how often violations would occur.

SOURCES OF DATA: Administrative Office of the Courts, Sentencing Commission.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas R. Holbrook



APPROVED BY: James D. Johnson, Director Fiscal Research Division



DATE: April 30, 2003

HOUSE BILL 916 : FIRST-RESPONDERS VACCINATION PROGRAM.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Reps. Brubaker and Insko
Date:	May 29, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 916 establishes a first responders vaccination program for emergency personnel who are likely to be the first responders deployed to disaster locations who may be exposed to infectious diseases. Vaccinations will be available to first responders when recommended by the United States Public Health Service.***

BILL ANALYSIS: House Bill 916 requires the Department of Health and Human Services and local health departments to offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. Under the bill "first responders" are State and local law enforcement personnel and emergency medical personnel who would be deployed to such locations. Participation in the program is voluntary for most first responders, but is mandatory for those first responders classified under the Occupational Safety and Health Act (OSHA) as persons likely to be exposed to bloodborne pathogens in their jobs. A first responder may be exempt from vaccinations for medical or religious reasons. Under the bill the State Public Health Director must give priority to first responders deployed to a disaster location if there is a shortage of vaccine. The Department shall notify first responders about the availability of the program and shall provide educational materials about how to prevent exposure to infectious diseases. The Department and local health departments will implement the vaccination program upon the application for and receipt of federal funds.

BACKGROUND: The Kentucky state legislature enacted similar legislation this session. The state legislatures of Oklahoma and Mississippi have passed similar legislation, but the bills have yet to be signed into law. In addition, the Missouri state legislature has considered similar legislation this session.

EFFECTIVE DATE: The bill is effective when it becomes law.

Sandra Alley, Counsel to the House Health Committee and Amy Compeau, Research Assistant, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 916

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H916-ARU-28 [v.1]

Date 5-29 ,2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Senator Hoyle

moves to amend the bill on page 1, lines 22 through 26,
by rewriting the lines to read:

"(c) Nothing in this section shall require first responders, except first responders for whom the vaccination program is not voluntary as set forth in subsection (b) of this section, who present a written statement from a licensed physician indicating that a vaccine is medically contraindicated for the first responder or the first responder signs a written statement that the administration of a vaccination conflicts with the first responder's religious tenets from receiving a vaccine.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 916

Short Title:	First-Responders Vaccination Program.	(Public)
Sponsors:	Representatives Brubaker; and Insko.	
Referred to:	Health.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VACCINATION PROGRAM FOR FIRST RESPONDERS TO TERRORIST INCIDENTS, CATASTROPHIC OR NATURAL DISASTERS, OR EMERGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-485. Vaccination program established; definitions.**

(a) The Department shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diptheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination, and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary, as determined by the State Health Director.

(b) Participation in the vaccination program is voluntary by the first responders, except for first responders who are classified as having "occupational exposure" to bloodborne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 C.F.R. § 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(c) The Department shall exempt from vaccinations first responders who present a written statement from a licensed physician indicating that a vaccine is medically contraindicated for the first responder or the first responder signs a written statement that the administration of a vaccination conflicts with the first responder's religious tenets.

(d) In the event of a vaccine shortage, the State Public Health Director, in consultation with the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders.

(e) The Department shall notify first responders of the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(f) The Department may contract with local and district health departments, not-for-profit home health care agencies, hospitals, and physicians to administer a vaccination program for first responders.

(g) As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Bioterrorism' means the intentional use of any microorganism, virus, infectious substance, biological product, or biological agent as defined in G.S. 130A-479 that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product to cause or attempt to cause death, disease, or other biological malfunction in any living organism.

(2) 'Disaster locations' means any geographical location where a bioterrorism attack, terrorist incident, catastrophic or natural disaster, or emergency occurs.

(3) 'First responders' means State and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or emergencies."

SECTION 2. Nothing in this act obligates the General Assembly to appropriate State funds for the implementation of this act. The Department of Health and Human Services shall apply for federal funds available to implement a vaccination program for first responders as enacted in Section 1 of this act and, upon receipt of federal funds, shall implement the vaccination program established by this act.

SECTION 3. This act is effective when it becomes law.

H 1

HOUSE BILL 869

Short Title:	Reporting Absentee Votes.	(Public)
Sponsors:	Representatives Gorman; and Blust.	
Referred to:	Election Law and Campaign Finance Reform.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO ADVANCE THE DATE FOR REPORTING MAILED ABSENTEE AND ONE-STOP VOTES BY PRECINCT FROM 2006 TO 2004 FOR THOSE COUNTIES CAPABLE OF DOING SO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-132.5G reads as rewritten:

"**§ 163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop. The county board shall not be required to report absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election. Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 869:
Reporting Absentee Votes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Gorman
Date:	May 22, 2003	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 869 would amend a recently enacted statute requiring counties to report absentee voting data by precinct. The statute says counties must do so by 2006. The bill says any county that is able to do so by 2004 must do so by 2004. Effective when it becomes law.***

CURRENT LAW: The 2001 General Assembly enacted a new provision to require absentee votes, whether mail-in or one-stop, to be reported by precinct, effective with the 2006 election. The State Board was to adopt rules to ensure that the reporting by the county boards of elections was implemented by the 2006 election, and provide for exemptions from the reporting requirement in the case of financial hardship. The statute does not require that all absentee votes be reported by the canvass 3 days after the election, but instead gives board until 60 days after the election to do so. The statute also requires that the reporting be done by precinct only to the extent that can be done without compromising the secrecy of the ballot.

BILL ANALYSIS: House Bill 869 would require that in adopting rules to implement the requirement to have absentee votes reported by precinct, the State Board must require that counties that are able to comply by the 2004 election must do so by 2004 rather than 2006.

BACKGROUND: The Legislative Services Office is required, as part of its duty to develop a computer system for redistricting, to collect voter registration data and election data as well as Census population data, for every precinct in the State. County boards of elections are required to prepare abstracts of election data by precinct. Those abstracts are stored with the county's Clerk of Superior Court and the Secretary of State. The State Board of Elections also has the authority to collect computerized election returns. The U.S. Justice Department frequently asks to see election data by precinct as part of its review of redistricting plans under Section 5 of the Voting Rights Act.

In collecting voter registration and election data by precinct, the Legislative Services Office has encountered an issue in that many voters are casting their votes by absentee ballots. Many counties do not break down returns coming from those kinds of ballots by precinct. For example, in the 2000 NC Governor's election, 486,152 votes were reported by county boards at the county level – not by precinct. This was 14.2% of the total of 3,428,214 votes cast. It was observed that unless boards developed the ability to report absentee votes by precinct, the consequence of increased absentee and one-stop voting would be that election results by precinct will become increasingly unreliable in reflecting how the voters of that precinct actually vote.

The original version of this summary was written by Erika Churchill.

LAST ED.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 65

Committee Substitute Favorable 3/26/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H65-CSRO-22 [v.3]

5/28/2003 6:05:47 PM

Short Title: Autopsy Photos Not Public Record. (Public)

Sponsors:

Referred to:

February 24, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report including any findings and interpretations prepared in accordance with G.S. 130A-389(a) is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge.A~~ Subject to the limitations of G.S. 130A-389.1

relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings, but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.

(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 1 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or

audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 1 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class I felony."

SECTION 4. This act becomes effective July 1, 2003, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

HB65

North Carolina Metro – Chiefs

Asheville – Burlington – Chapel Hill - Charlotte-Mecklenburg – Concord – Durham - Fayetteville – Gastonia - Gaston County – Goldsboro – Greensboro – Greenville - Hickory- High Point - Huntersville – Jacksonville – Kannapolis – NC Assn. of Chiefs of Police – NC Assn. of Campus Law Enforcement Administrators – Raleigh – Rocky Mount – Salisbury – State Bureau of Investigation – State Highway Patrol – Wilmington – Wilson – Winston-Salem

The North Carolina Metro Chiefs is an organization comprised of the largest police agencies in the state with representation from the NC Association of Chiefs of Police and the NC Association of Campus Law Enforcement Administrators. Our purpose is to improve policing in North Carolina through exchange of innovative ideas and to provide input into statewide public policy decisions.

Listed below are some of the important bills under consideration by the General Assembly that the Metro-Chiefs support:

Criminal Law

- H926/S868 – Assault in the Presence of a Child
- S919 – Homicide Prevention Act/Domestic Violence
- H408 – Amend Secret Peeping Law

Miscellaneous

- S692 – Terror Response Plans
- H65 – Autopsy Photos not public record

We encourage you to contact your local police chief or a chief from any of the above agencies to assist you with legislation which has an impact on law enforcement or crime prevention.

REPRESENTATIVE KAREN B. RAY
NORTH CAROLINA HOUSE OF REPRESENTATIVES
95TH DISTRICT

STATE LEGISLATIVE BUILDING
16 W. JONES STREET, ROOM 1315
RALEIGH, NC 27601-1096
919-733-5741 TELEPHONE
919-834-1507 FAX

HOME ADDRESS
262 GIBBS ROAD
MOORESVILLE, NC 28117
704-660-5961
FAX 704-663-0520

HB-65

According to the National Coalition Acting for Autopsy Privacy website, below is the status of States with regard to the release of autopsy photographs.

CLOSED STATES

Alabama
Alaska
Arkansas
California
Delaware
Florida
Georgia
Hawaii
Indiana
Iowa
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nevada
New Hampshire
New Jersey
Oklahoma
Oregon
Rhode Island
South Carolina
Texas
Utah
Vermont
Virginia
Washington
West Virginia

OPEN STATES

Arizona
Colorado
Connecticut
Idaho
Illinois
Kansas
Mississippi
Nebraska
New Mexico
Ohio
Pennsylvania
South Dakota
Tennessee
Wisconsin
Wyoming

PENDING

North Carolina
North Dakota

IN PROGRESS

Kentucky
New York

HOUSE BILL 65:
Autopsy Photos Not Public Record.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Ray
Date:	May 13, 2003	**Summary by:**	William R. Gilkeson
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 65 would provide that photographs and video and audio recordings of official autopsies are not public records. The custodian of those photos and recordings would allow members of the general public to view them, but not to have copies. The text of an autopsy report, however, would continue to be a public record and fully accessible by the public. In addition, certain public officials and others could obtain copies for official use or other specialized use only. Persons who feel entitled to obtain copies of the photos could seek an order through a special proceeding before a clerk of court to obtain them. The bill makes the unauthorized disclosure of these documents a Class I felony and stealing the documents a Class H felony. Effective July 1, 2003, and applies to unauthorized disclosures made on or after that date.***

CURRENT LAW: In North Carolina, unlike in some other States, the right of public access to governmental records is not in the Constitution. That right is statutory only. But the statutory right is very broad: The Public Records statute, G.S. Chapter 132, defines a public record to include any "documentary material, regardless of physical form or characteristics, made or received by an agency of North Carolina government or its subdivisions in connection with the transaction of public business". The statute goes on to provide that "it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." The General Assembly has made several statutory exceptions to that broad statute. State Supreme Court has made clear that any exceptions to the public records statute will have to be made by the General Assembly – there will not be any court-created exceptions.

Under current law, autopsy reports, including photographs, video and audio recordings made in connection with the autopsy, fit into the G.S. 132-1's broad definition of public records.

In addition, the law that authorizes the medical examiner to conduct an official autopsy, also provides that a "copy of the report shall be furnished to other persons upon request." *G.S. 130A-389.* Official autopsies are those authorized by a medical examiner or requested by a district attorney or superior court judge. Private autopsies are those requested and paid for by a decedent's next-of-kin and become part of the decedent's medical records and therefore are not public records.

BILL ANALYSIS: House Bill 65 does the following:

- Exempts a photograph or video or audio recording from the definition of "public record." *Sec. 1.*
- Makes clear that the text of an autopsy report is still a public record and fully accessible by the public. *Sec. 1.*
- Gives any member of the public the right to view original photographs or recordings at reasonable times and under reasonable supervision, **but generally prohibits the custodian from furnishing copies.** *Sec. 3, in new G.S. 130A-389.1(a).*

- The following public officials may obtain copies for official use but may not disclose to the public except for the purpose of identifying the deceased:
  - The Chief Medical Examiner or designee
  - The investigating medical examiner
  - District attorney
  - Superior court judge
  - Law enforcement officials *Sec. 3, in new G.S. 130A-389.1(b).*
- After signing a statement acknowledging that they have received notice that unauthorized disclosure of autopsy recorded images is a crime, the following other persons may obtain copies but may not disclose to the public unless authorized by law;
  - Personal representative
  - A person authorized by court order
  - Another medical examiner or physician, or designee, for medical, scientific, purposes or for teaching or training purposes. *Sec. 3, in new G.S. 130A-389.1(c).*
- Authorizes a person who is denied access to copies to commence a special proceeding under Article 33 of Chapter 1. A special proceeding is a simplified and expedited judicial proceeding heard by the clerk of superior court. Currently, matters such as probate, adoption and guardianship are handled by special proceeding. In deciding whether to grant access, the clerk would be guided by "good cause" standards set out in the bill. A person aggrieved by the decision of the clerk may appeal to the superior court for a de novo review. *Sec. 3, in new G.S. 130A-389.1(d).* Petitioner must give notice to the decedent's personal representative, if any, and to the next-of-kin. *Subsection (e) of same section.*
- Provides that these restrictions do not apply to the use of autopsy photographs or video or audio recordings in criminal, civil or administrative proceedings. This provision allows autopsy photographs or video or audio recordings to be used as evidence in a criminal or civil trial or an administrative proceeding. Once these documents become part of a court record they become public records and cannot be exempted without violating the Constitution. However, in a specific case, the court or presiding officer may restrict the use of the recorded images. *Sec. 3, in new G.S. 130A-389.1(f).*
- Willfully and knowingly giving copies of autopsy photos or recordings to an unauthorized person is a Class I felony. *Sec. 3, in new G.S. 130A-389.1(g).*
- Willful and knowing removal or copying of the photographs or recordings with intent to steal is a Class H felony. *Sec. 3, in new G.S. 130A-389.1(h).*

Karen Cochrane-Brown, counsel to House Judiciary II, was the original author of this summary.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB 65 2nd Edition

SHORT TITLE: Autopsy Photos Not Public Record

SPONSOR(S): Representative Ray

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring		Unable to determine exact amount.			
Judicial					
Recurring		Unable to determine exact amount.			
TOTAL EXPENDITURES:		Unable to determine exact amount.			
ADDITIONAL PRISON BEDS*	Unable to determine exact amount; no significant impact anticipated.				
POSITIONS: (cumulative)	Unable to determine exact amount; no additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch

EFFECTIVE DATE: December 1, 2003

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: HB 65 creates a special exemption from the Public Records Law for photographs and video or audio recordings of an autopsy. The bill also amends Chapter 132 of the General Statutes by adding a new section, which provides that any person may inspect or examine photographs or video or audio recordings of an autopsy at reasonable times and under reasonable supervision of the custodian. The custodian of the record is prohibited from providing copies of the record to the public, except as otherwise provided.

Two broad categories of groups are allowed to access autopsy records under the bill: (1) public officials (chief medical examiner, investigating medical examiner, district attorney, superior court judge, and law enforcement officers conducting an investigation) and (2) personal representatives of the estate of the deceased; a person authorized by order issued in a special proceeding; and a medical examiner, coroner, physician, or their designee who uses the material for teaching, training, or academic purposes.

HB 65 clarifies the procedure through which a person can access autopsy records, and makes conforming changes to notice requirements. New G.S. 130A-389.1(d) provides that a person who is denied access to copies of an autopsy record or who is restricted in their use may commence a special proceeding pursuant to Article 33, Chapter 1 of the General Statues. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose such record, and may prescribe any restrictions or stipulations that the clerk deems appropriate. Appeals may be made to the Superior Court pursuant to Article 27A, Chapter 1 governing appeals and transfers from the clerk. The bill does not apply to civil proceedings.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

Because the proposed bill creates two new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of HB 65 on the prison population. It is not known how many offenders might be sentenced for Class I and Class H felony convictions. If, for example, there were ten Class I convictions for violations of disclosing autopsy records in violation of G.S. 130A-389.1(g), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2000-2001, 9 percent of Class I felony offenders were sentenced to active sentences, 37 percent were sentenced to intermediate sanctions, and 54

percent were sentenced to community punishment. On average, offenders served between seven and nine months.

Furthermore, if there were three Class H felony convictions for removal and copying of an autopsy record with the intent to steal the record in violation of G.S. 130A-389.1(h), the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. Class H felons serve active prison sentences, receive intermediate sanctions, and may receive community punishment if they fall in Prior Record Level I. In 2000-2001, 33 percent of Class H felony offenders were sentenced to active sentences, 51 percent were sentenced to intermediate sanctions, and 16 percent were sentenced to community punishment. On average, offenders served between nine and twelve months.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because the bill provides for a new Class I and Class H felony offense, AOC is unable to estimate the number of new charges that may result from this bill. For Class I felony offenses that are brought to trial, the estimated court cost per trial is $4,637. For Class I offenses not brought to trial and where a guilty plea is entered, AOC estimates the cost per guilty plea at $255. For Class H felony offenses that are brought to trial, the estimated court cost per trial is $5,012. For Class H felony offenses not brought to trial and where a guilty plea is entered, AOC estimates the cost per guilty plea at $283. It is unlikely that many trials and pleas would occur as a result of this bill.

AOC also estimates that HB 65 would have an impact on the clerk's workload resulting from the special proceedings commenced to access autopsy records. However, there is no data available to estimate the number of such proceedings. Furthermore, AOC anticipates that since HB 65 does not apply to civil, criminal, or administrative proceedings, the autopsy records introduced into evidence would become public records via the trial record and that clerks would not incur additional workload in carrying out measures to keep such records confidential. However, to the extent that the bill may lead to a large number of motions in criminal cases for orders restricting or controlling disclosure of an autopsy report, there may be an additional time and cost to the court, prosecution, and defense.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser

and

Douglas R. Holbrook, Jr.

APPROVED BY: James D. Johnson, Director Fiscal Research Division

DATE: March 28, 2003

passed a ballot proposal last year that requires a two-thirds vote in the legislature to remove items from the state's public-records law.

"The public was so enraged (at the legislature's action) ... that the public reacted with a 73 percent margin in November," Bussian said.

• David Rice can be reached in Raleigh at (919) 833-9056 or at drice@wsjournal.com

Dale Earnhardt autopsy photos to stay private

A circuit judge says the harm that may come to the driver's wife, Teresa Earnhardt, is sufficient reason.

By KEVIN KELLY

© St. Petersburg Times,
published June 14, 2001

DAYTONA BEACH -- Siding with the widow of race-car driver Dale Earnhardt, a circuit judge ruled Wednesday that autopsy photos of the NASCAR legend should remain private.

"The harm which could come to Mrs. Earnhardt alone is sufficient under the testimony in this particular case," Judge Joseph Will said. "The court considers the seriousness of the invasion to be of the highest degree.

"It's unspeakable and doesn't really require further factual definition to satisfy this court," he said. "An invasion of this kind does not cut deeper."

Surrounded by her lawyers, Teresa Earnhardt, 42, sat expressionless as the judge read his decision after a 75-minute recess.

Mrs. Earnhardt, who filed a lawsuit four days after her husband died to stop the release of the photos, left the courtroom without speaking to reporters.

"She seem to be pleased," said Thom Rumberger, a lawyer for Mrs. Earnhardt. "I got a little squeeze on the hand. . . . She's going about her business now. Hopefully, at least for a while, this will kind of simmer down."

That isn't likely.

Attorneys for the Independent Florida Alligator, a student-run newspaper at the University of Florida, and a Deland-based Web site vowed immediately to seek a new trial and, if that is denied, to appeal to the Florida Supreme Court the constitutionality of a new law that protects the release of autopsy photos.

The Alligator and Michael Uribe, who operates websitecity.com, sought the photographs to explore the validity of investigations performed by the Volusia County medical examiner and Daytona Beach Police Department and to help prevent further deaths in NASCAR.

"This ruling denies the public access to important information that could protect, in this case, other drivers from the same type of injury that occurred here," Alligator attorney Tom Julin said.

Dale Earnhardt, a seven-time Winston Cup champion, was the fourth NASCAR driver to die of a basal skull fracture since May 2000.

NASCAR, along with Dr. Steve Bohannon, director of emergency medical services at Daytona International Speedway, held a news conference five days after his accident to announce a broken left lap belt might have contributed to the driver's death on Feb. 18.

"We want to know what happened," Julin said. "We want to know what was the (cause) of death, what killed Dale Earnhardt and whether NASCAR was covering up that cause.

"These autopsy photographs could offer important information about that. We still need to see them and that's why we're going to continue."

Mrs. Earnhardt testified for an hour and 45 minutes Tuesday, saying no one should be allowed to view the photos, particularly on the Internet, because of their disturbing nature.

"The photos are humiliating, disgusting and negative," she said. "They could be nothing but harmful and painful to my family, my company, our fans . . . anybody."

Uribe recently published the autopsy photos of NASCAR drivers Rodney Orr and Neil Bonnett on his Web site. Relatives of the two drivers testified Tuesday as to the grief caused by Uribe's action.

"My personal beliefs on all this, no matter what, is that these records should be available to the public with unfettered access," he said. "That got me into this ballgame."

Will's judgment was the second favorable ruling for Mrs. Earnhardt during the three-day hearing.

He ruled Monday that the Family Protection Act passed by the Legislature in March was a valid and constitutional exercise. The law made it a felony to release autopsy photos without a judge's approval.

"I think our strongest argument is attacking the statute because it's got a lot of defects in it," Julin said. "It's overbroad."

Attorneys for Mrs. Earnhardt asked Will to issue a permanent injunction to keep the photos sealed.

"There is a Legislature," Volusia County attorney Dan Eckert stated, "and we are not it."

Will said it would be inappropriate for a circuit judge to rule on such a request, given the new law. Therefore, lawyers for Mrs. Earnhardt are prepared for several more rounds of challenges.

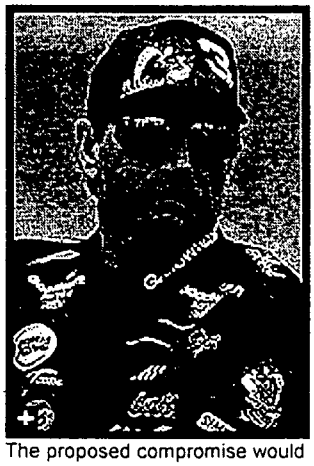
"I don't think it brings closure," Rumberger said. "I think it's part closure. It's the start of something else we'll just deal with as the days and weeks and months and years go on."

Middle ground

Foundation proposes autopsy photo compromise

Posted: Saturday March 10, 2001 9:06 PM

Click here for more on this story



The proposed compromise would allow the public unlimited access to view the photos, but ban copying them. Robert Laberge/Allsport

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 65

Short Title:	Autopsy Photos Not Public Record.	(Public)
Sponsors:	Representatives Ray; Barnhart, Frye, Gorman, Gulley, L. Johnson, Justus, McGee, Pate, Preston, Rhodes, Setzer, K. Williams, and Wood.	
Referred to:	Judiciary II.	

February 24, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT A PUBLIC RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.5A. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Findings. – The General Assembly finds the following:

(1) Photographs or video or audio recordings of an autopsy show or describe the deceased in a graphic and often disturbing fashion. The photographs or video or audio recordings may depict the deceased nude, bruised, bloodied, broken, with bullet or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings of an autopsy are highly sensitive depictions of the deceased which, if copied and publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased.

(2) The existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of photographs and video or audio recordings 24 hours a day and that widespread dissemination of autopsy photographs and video or audio recordings would subject the immediate family of the deceased to continuous injury.

(3) There are other types of information available, such as the text of the autopsy report, which are less intrusive and injurious to the immediate

family members of the deceased but which provide for public oversight.

(4) Given the likelihood of injury to immediate family members by the dissemination of autopsy photographs and video or audio recordings and the availability of less intrusive means of providing public oversight, it is a public necessity to provide by law that photographs and video or audio recordings of an autopsy are not a public record under G.S. 132-1.

(b) Access Restricted. – Except as otherwise provided in this subsection, a photograph or video or audio recording of an autopsy is not a public record as defined by G.S. 132-1. The custodian of a photograph or video or audio recording of an autopsy shall grant access to the photograph or video or audio recording to the following:

(1) Chief Medical Examiner.

(2) Authorizing medical examiner.

(3) District attorney.

(4) Superior court judge.

(5) An individual entitled to bring a wrongful death action on behalf of the deceased under G.S. 28A-18-2.

(6) The surviving spouse of the deceased may view and copy a photograph or video or listen to or copy an audio recording of the deceased spouse's autopsy. If there is no surviving spouse, then the surviving parents of the deceased may have access to the photograph or video or audio recording of the autopsy. If there are no surviving parents, then an adult child of the deceased may have access to the photograph or video or audio recording of the autopsy.

(7) Law enforcement officials conducting an investigation of the death. A law enforcement official may provide a copy of the photograph or videotape to the media for the purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(8) A local government entity, or a State or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video or may listen to or copy an audio recording of an autopsy, and unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential.

(9) A person authorized by the court pursuant to subsection (c) of this section.

(10) The guardian or custodian of a minor child of the deceased.

(c) Court Order. – A person who is denied access to photographs or video or audio recordings under this section may apply to the appropriate division of the General Court of Justice for an order. The court, upon a showing of good cause, may issue an order authorizing the person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court shall consider whether the disclosure is necessary for the public evaluation of

governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the custodian of the record or the custodian's designee.

(d) Notice of Petition. – The clerk of court shall provide reasonable notice of a petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording of an autopsy, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. The notice shall be provided to a surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(e) Criminal and Administrative Proceedings. – This section does not apply to a criminal or administrative proceeding except that nothing in this section prohibits a court or administrative proceeding, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(f) Penalties. – Any person who provides one or more photographs or video or audio recordings in violation of this section is guilty of a Class H felony. Any person who willfully and knowingly violates a court order issued pursuant to this section is guilty of a Class H felony."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. ~~A~~ Subject to the limitations of G.S. 132-1.5A, a copy of the report shall be furnished to other persons upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. This act is effective when it becomes law and applies to all photographs or video or audio recordings of an autopsy regardless of whether the autopsy was performed before or after the effective date of this act.

last

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 760
PROPOSED COMMITTEE SUBSTITUTE S760-CSRR-27 [v.6]

6/1/2003 10:49:57 PM

Short Title: Local Campaign Finance Options. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GRANTS FROM UNIFORM PROGRAMS FOR PUBLIC CAMPAIGN FINANCING DO NOT CONSTITUTE "CONTRIBUTIONS" AND ARE NOT SUBJECT TO RESTRICTIONS ON CONTRIBUTIONS; TO CLARIFY THAT GOVERNMENTS IN CITIES AND COUNTIES OF A CERTAIN SIZE ARE AUTHORIZED TO CONDUCT THOSE PROGRAMS; TO GRANT GOVERNMENTS IN CITIES AND COUNTIES OF A CERTAIN SIZE AUTHORITY TO SET CONTRIBUTION LIMITS AT $1,000 FOR LOCAL OFFICES RATHER THAN THE STATEWIDE LIMIT OF $4,000; AND TO APPROPRIATE FUNDS FOR AND MANDATE A STUDY OF LOCAL PUBLIC CAMPAIGN FINANCING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such

as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.' The term 'contribution' does not include a grant from a governmental entity under a uniform program of grants to the campaigns of candidates for elective office within the jurisdiction of that governmental entity if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the government, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes. Grants pursuant to such a program are not subject to the contribution limitations of G.S. 163-278.13 and the prohibitions on corporate contributions of G.S. 163-278.15 or 163-278.19, but shall be reported as if they were contributions in all campaign reports required by law to be filed by the campaigns receiving the grants."

SECTION 2. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-499. Uniform, nondiscriminatory program of public financing of election campaigns.**

A governing body of a county with a population exceeding 80,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for county office in that county if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the county, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for permissible campaign-related expenditures in accordance with guidelines published pursuant to G.S. 163-278.64(d)(5) or other guidelines published by the State Board of Elections.

A governing body of a city with a population exceeding 40,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for city office in that city if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the city, (ii) the criteria are drawn to further

the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for permissible campaign-related expenditures in accordance with guidelines published pursuant to G.S. 163-278.64(d)(5) or other guidelines published by the State Board of Elections.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 3. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-500. Authority to set political contribution limit at $1,000 for local office.**

A governing body of a county with a population exceeding 80,000 according to the most recent decennial federal census may substitute one thousand dollars ($1,000) for the dollar amount provided in G.S. 163-278.13(a) and (b) as a contribution limit with respect to elections for county offices in that county.

A governing body of a city with a population exceeding 40,000 according to the most recent decennial federal census may substitute one thousand dollars ($1,000) for the dollar amount provided in G.S. 163-278.13(a) and (b) as a contribution limit with respect to elections for city offices in that city.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 4. G.S. 153A-445 reads as rewritten:

"**§ 153A-445. Miscellaneous powers found in Chapter 160A.**

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. – Joint Exercise of Powers.
(2) Chapter 160A, Article 20, Part 2. – Regional Councils of Governments.
(3) G.S. 160A-487. – Financial support for rescue squads.
(4) G.S. 160A-488. – Art galleries and museums.
(5) G.S. 160A-492. – Human relations programs.
(6) G.S. 160A-497. – Senior citizens programs.
(7) G.S. 160A-489. – Auditoriums, coliseums, and convention and civic centers.
(8) G.S. 160A-498. – Railroad corridor preservation.
(9) G.S. 160A-499. – Uniform, nondiscriminatory program of public financing of election campaigns.
(10) G.S. 160A-500. – Authority to set political contribution limit at $1,000 for local office.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties."

SECTION 5. No later than 18 months after this act becomes effective, the State Board of Elections shall complete a study of a variety of public campaign

financing programs for local government elections in the United States, prepare a description of the basic elements generally present, and compile a collection of reference materials for local governments in North Carolina to use in designing their programs. Of the funds appropriated to the State Board of Elections for the 2003-2004 fiscal year, the sum of fifteen thousand dollars ($15,000) shall be used for this purpose.

SECTION 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

5-29-03
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Keene	NC Medical Society
Rob Lamm	H+S
David Knight	TPL
Priscy Hanna	Beaufort NC
[illegible]	G&I
Aaron Cohen	ESC
Amy Jo Horne	NCMS
Charles Wilkins	AFLAC
Hal Miller	DCNCCT
Bob Reeds	PFFBNC
Jack Betts	Charlotte Observer
BRUCE THOMPSON	PRIVATE POB

VISITOR REGISTRATION SHEET

Judiciary I — 5/29/03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Cohen	Bill Drafting
Jennifer Williston	Bill Drafting
Brian Walker	Bill Drafting
Kathryn Queen	Wake Co Bd of Elections
Elizabeth Dalton	Bone & Assoc.
Jesse Rutledge	NC CUE
Chris Heagarty	NC CUE
Bill Kratt	Wyrick Robbins
Barb Morgan	Wyrick Robbins
[illegible]	AOC
John Phelps	NCLM
FRAN PRESTON	NCRMA
RON AYCOCK	NC CCA
Sheri Barbera	Charlotte

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

5/29/03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cain	BPMHC
Johnnie McLean	S.B.E.
Gary Bartlett	" " "
Donna Rygott	NCVAN
Ted Vaden	Chapel Hill News
Teri Saylor	NCPA
John Bussian	"
Frank Gray	N.C. M.H.D.D.S.A.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

REVISED NOTICE/ HB-497 REMOVED FROM AGENDA

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 3, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB-786	Civil Parking/Red Light Prima Facie Rule	Rep. Culpepper
HB-926	Assault In The Presence of A Child	Rep. Dickson
HB-1114	School Volunteer Records Are Confidential	Rep. Saunders
HB-1120	H.S. Students As Poll Workers	Rep. Alexander
HB-1171	Amend Hazing Laws	Rep. Dickson
SB-760	Local Campaign Finance Reform	Sen. Gulley

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

June 3, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with twelve members present. He introduced Pages Elizabeth Brim from Asheboro, NC, Paul Gulley and Brian Lewis both from Durham, NC.

HB-786 (Civil Parking/Red Light Prima Facie Rule) Committee Substitute was introduced by Senator Clodfelter. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Bill Culpepper explained that the bill would amend the statutes providing for the liability of owners of vehicles that were illegally parked, or were the subject of citations for violating the "red light camera" law. See attached Bill Summary for further information. Senator Horton had a question. Rep. Culpepper answered the question. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

HB-1171 (Amend Hazing Laws) was introduced by Senator Clodfelter. Bill sponsor, Representative Margaret Dickson explained that the bill would re-define the term "hazing"; removes the sanction of mandatory expulsion from school as the penalty for hazing; and removes the criminal sanction against a school official for the failure of the official to expel a student who has been convicted of hazing under the criminal laws. See Bill Summary for further information. Senator's Ham Horton, Wib Gulley, Phillip Berger, Vernon Malone and Patrick Ballantine had questions. Senator Clodfelter and Staff Attorney, Hal Pell answered the questions. The bill was displaced and will be heard at a future time.

HB-1120 (H.S. Students As Poll Workers) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative Martha Alexander, Staff Attorney Bill Gilkeson explained the changes would authorize the appointment of high school students 17 years and older as student election assistants, move the canvass from the third to the seventh day after election day, and make several other election-law changes. See attached Bill Summary for further information. Senator Jeanne Lucas had a question. Mr. Gary Bartlett, NC Board of

Elections spoke briefly on the bill and answered the question. Senator R.C. Soles moved for a Favorable Report. All members voted yes. Motion carried.

SB-760 (Local Campaign Finance Reform) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Wib Gulley moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Gulley explained that the changes gives express authority to counties over 80,000 population and cities over 40,000 to the following: Establish and appropriate funds for uniform public financing programs for candidates for local offices. The bill would also clarify that grants from such a program are not "contributions" subject to the four thousand dollar limit, and would set a lower contribution limit for local races at a thousand dollars per donor, per donee, per election, rather than the statewide standard of four thousand dollars. See Bill summary for further information. Senator's Vernon Malone and Phillip Berger had questions. Senator Gulley answered the questions. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried. Senator Clodfelter stated the bill would be re-referred to the Appropriations Committee.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, June 04, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **760** Local Campaign Finance Reform.

Draft Number:	PCS75251
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **786** Civil Parking/Red Light Prima Facie Rule.

Draft Number:	PCS45154
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1120** H.S. Students as Pollworkers.

Draft Number:	PCS70332
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

LAST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 786
Second Edition Engrossed 4/25/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H786-CSRK-62 [v.2]

5/29/2003 4:59:20 PM

Short Title: Parking/Red Light Camera Liability Rules. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND LIABILITY RULES THAT APPLY TO CIVIL PARKING AND RED LIGHT CAMERA ENFORCEMENT ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-301 is amended by adding a new subsection to read:

"(e) The registered owner of a vehicle that has been leased or rented to another person or company shall not be liable for a violation of an ordinance adopted pursuant to this section if, after receiving notification of the civil violation within 90 days of the date of occurrence, the owner, within 30 days thereafter, files with the officials or agents of the municipality an affidavit including the name and address of the person or company that leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to provide the name and address of the lessee or renter and the owner shall not be held responsible for the violation."

SECTION 2. G.S. 160A-300.1(c) reads as rewritten:

"(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within ~~21~~30 days after notification of the violation,

furnishes the officials or agents of the municipality which issued the citation either of the following:

a. An affidavit stating ~~The~~ the name and address of the person or company who ~~leased, rented, or otherwise~~ had the care, custody, and control of the ~~vehicle; or~~vehicle.

b. An affidavit stating that the vehicle involved was, at the time, ~~stolen~~ stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information. ~~or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.~~

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

~~(2)~~(3) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

~~(3)~~(4) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

~~(4)~~(5) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 786 PCS:
Civil Parking/Red Light Prima Facie Rule.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Culpepper
Date:	June 3, 2003	**Summary by:**	H. Alan Pell
Version:	PCS H786-csrk-62		Committee Co-Counsel

SUMMARY: ***This bill would provide amend the statutes providing for the liability of owners of vehicles that were illegally parked, or were the subject of citations for violating the "red light camera" law.***

BILL ANALYSIS:

Section 1: The bill provides that the registered owner of a vehicle may avoid liability for a parking ticket if, within 30 days after receiving notice of the violation, provides the municipality with the name and address of the person to whom the vehicle had been rented or leased. The registered owner is not liable, and has no obligation to respond, if the ticket is received more than 90 days after the violation occurred.

Section 2: The bill provides a person receiving a citation under the "red light camera" law is not responsible for the violation if he provides, within 30 days after notification of the violation, an affidavit:

(1) stating the name and address of the person who had care, custody, and control of the vehicle; or

(2) stating that the vehicle was stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

If the notification is not provided by the municipality to the owner within 90 days of the occurrence, then the owner is not responsible for the violation, and there is no obligation to provide any information.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 786

Short Title:	Civil Parking/Red Light Prima Facie Rule.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary III.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PRIMA FACIE RULE FOR PARKING APPLIES TO CIVIL PARKING AND RED LIGHT CAMERA ENFORCEMENT ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-162.1 reads as rewritten:

"**§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.**

(a) Whenever evidence shall be presented in any court or in any civil nonjudicial enforcement hearing or appeal of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of any municipal or Department of Transportation ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court or in any civil nonjudicial enforcement hearing or appeal in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person found responsible for an infraction pursuant to this section shall be subject to a penalty of not more than five dollars ($5.00)."

SECTION 2. G.S. 160A-300.1(c) reads as rewritten:

"(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this

section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:
   a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or
   b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) Subdivision (1) of this subsection shall not apply if the registered owner of the vehicle has leased or rented the vehicle to another person or company and if, after receiving notification of the civil violation within 90 days of the date of occurrence, the owner, within 30 days thereafter, files with the officials or agents of the municipality an affidavit including the name and address of the person or company that leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to provide the name and address of the lessee or renter and the owner shall not be held responsible for the violation.

~~(2)~~(3) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

~~(3)~~(4) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

~~(4)~~(5) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1171
Committee Substitute Favorable 4/29/03

Short Title: Amend Hazing Laws. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE LAW PROHIBITING HAZING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-35 reads as rewritten:

"**§ 14-35. Hazing; definition and punishment.**

It ~~shall be~~ is unlawful for any student in attendance at any university, ~~college~~college, or school in this State to engage in ~~what is known as~~ hazing, or to aid or abet any other student in the commission of this offense. For the purposes of this section hazing is defined as follows: ~~"to annoy any student by playing abusive or ridiculous tricks upon him, to frighten, scold, beat or harass him, or to subject him to personal indignity."~~ "to cause, require, or permit a person, incident to initiation into or membership in a society, club, athletic team, or similar organized group, to participate in any activity that subjects or is likely to subject that person or others to risks of physical injury, mental distress, or personal indignities." Any violation of this section shall constitute a Class 2 misdemeanor."

SECTION 2. G.S. 14-36 reads as rewritten:

"**§ 14-36. ~~Expulsion from school; duty of faculty to expel.~~Disciplinary action.**

Upon conviction of any student of the offense of hazing, or of aiding or abetting in the commission of this offense, ~~he shall, in addition to any punishment imposed by the court, be expelled from the college or school he is attending. The faculty or governing board of any college or school charged with the duty of expulsion of students for proper cause shall, upon such conviction at once expel the offender, and a failure to do so shall be a Class 1 misdemeanor.~~the university, college, or school shall initiate appropriate disciplinary procedures and shall impose punishment commensurate with the offense."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 1171:
Amend Hazing Laws.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Dickson
Date:	June 3, 2003	**Summary by:**	H. Alan Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***This bill would re-define the term "hazing"; removes the sanction of mandatory expulsion from school as the penalty for hazing; and removes the criminal sanction against a school official for the failure of the official to expel a student who has been convicted of hazing under the criminal laws.***

CURRENT LAW: A college or school official, with the responsibility to expel a student convicted of hazing, commits a Class 1 misdemeanor if the official does not expel the student.

BILL ANALYSIS:

Section 1: Clarifies that the student must be in attendance at a university, college, or school in the State to be subject to criminal sanctions for hazing. Hazing is re-defined, and an additional requirement is added: that the hazing be "incident to initiation into or membership in a society, club, athletic team, or similar organized group."

Section 2: Removes the sanction of mandatory expulsion from school upon a hazing conviction. The school would be required to initiate appropriate disciplinary procedures, and impose a commensurate punishment to the hazing offense.

Section 3: The act would be effective December 1, 2003, and applies to offenses committed on or after that date.

H1171-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1120

Committee Substitute Favorable 4/24/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1120-PCS70332-RR-29

Short Title: Student Pollworkers/Other Changes. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE APPOINTMENT OF CERTAIN HIGH SCHOOL STUDENTS AS STUDENT ELECTION ASSISTANTS AND TO MAKE OTHER CHANGES TO THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-42.1. Student election assistants.**

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appointed as a student election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.

(2) Be a resident of the county in which the student is appointed.

(3) Be enrolled in a secondary educational institution, including a home school as defined in G.S. 115C-563(a), with an exemplary academic record as determined by that institution.

(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.

(5) Have the consent of a parent, legal custodian, or guardian.

The county board of elections may appoint student election assistants, following guidelines which shall be issued by the State Board of Elections. No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as a precinct assistant, shall be sworn in the same manner as a precinct assistant, and shall be compensated in the same manner as precinct assistants. The county board of elections shall prescribe the duties of a student election assistant, following guidelines which shall be issued by the State Board

of Elections. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election."

SECTION 2. G.S. 163-278.66(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in excess of three thousand dollars ($3,000) in support of or opposition to a certified ~~candidate~~ candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds. After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board."

SECTION 3. G.S. 163-46 reads as rewritten:

"**§ 163-46. Compensation of precinct officials and assistants.**

The precinct chief judge shall be paid the state minimum wage for his services on the day of a primary, special or general election. Judges of election shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars ($5.00) for their services on the day of a primary, general or special election. If an election official is being paid an hourly wage or daily fee on an election day and the official is performing additional election duties away from the assigned precinct voting place, the official shall not be entitled to any additional monies for those services, except for reimbursable expenses in performing the services.

If the county board of elections requests the presence of a chief judge or judge at the county canvass, the chief judge shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day. If the county board of elections requests a precinct official, including chief judge or judge, to personally deliver official ballots or other official materials to the county board of elections, the precinct official shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day.

The chairman of the county board of elections, along with the director of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each chief judge and judge of election, unless excused by the

chairman, and such precinct election officials shall be paid the sum of fifteen dollars ($15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay chief judges, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as chief judge, or judge of election when a previously appointed chief judge or judge fails to appear at the voting place or leaves his post on the day of an election or primary shall be paid the same compensation as the chief judge or judge appointed prior to that date.

For the purpose of this section, the phrase "the State minimum wage," means the amount set by G.S. 95-25.3(a). For the purpose of this section, no other provision of Article 2A of Chapter 95 of the General Statutes shall apply."

SECTION 4. G.S. 163-112(b) reads as rewritten:

"(b) Death of One of More Than Two Candidates within 10 Days after the Filing Period Closes. – If at the close of the filing period more than two candidates have filed for a ~~single~~ single-seat office, and within 10 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 10 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office."

SECTION 5. G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' includes any type of municipal, county, or special district ~~referendum.~~ referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article."

SECTION 6. G.S. 163-82.10(d) reads as rewritten:

"(d) Exception for Address of Certain Registered Voters. – Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed

statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2."

SECTION 7. G.S. 163-221 reads as rewritten:

"**§ 163-221. Persons may not sign name of another to petition.**

(a) No person may sign the name of another person ~~to:~~to any of the following:

(1) Any petition calling for an election or ~~referendum;~~referendum.

(2) Any petition under G.S. 163-96 for the formulation of a new political ~~party;~~party.

(3) Any petition under G.S. 163-107.1 requesting a person to be a ~~candidate;~~candidate.

(4) Any petition under G.S. 163-122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163-296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ~~ballot; or~~ballot.

(5) Any petition under G.S. 163-213.5 to place a name on the ballot under the Presidential Preference Primary Act.

(6) Any petition under G.S. 163-123 to qualify as a write-in candidate.

(b) Any name signed on a petition, in violation of this section, shall be void.

(c) Any person who willfully violates this section is guilty of a Class 2 misdemeanor."

SECTION 8.(a) G.S. 163-182.13(a) reads as rewritten:

"(a) When State Board May Order New Election. – The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent ~~that, although it is not possible to determine whether those irregularities or improprieties affected the outcome of the election,~~ that they taint the results of the entire election and cast doubt on its fairness."

SECTION 8.(b) G.S. 163-182.14 reads as rewritten:

"**§ 163-182.14. Appeal of a final decision to superior court.**

A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to ~~prevail, and that the results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.~~ prevail in the appeal."

SECTION 9.(a) G.S. 163-213.4 reads as rewritten:

"**§ 163-213.4. Nomination by State Board of Elections.**

The State Board of Elections shall convene in Raleigh on the first Tuesday in ~~February~~ March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

SECTION 9.(b) G.S. 163-213.5 reads as rewritten:

"**§ 163-213.5. Nomination by petition.**

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the Monday prior to the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96(b)(1) and (2) as they relate to the chairman of the county board of elections.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections."

SECTION 10.(a) G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~third day (Sunday excepted)~~ seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall conduct the canvass."

SECTION 10.(b) G.S. 163-182.7(b) reads as rewritten:

"(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by ~~noon on the fourth~~ 5:00 P.M. on the first day after the

canvass. The recount shall be conducted under the supervision of the county board of elections."

SECTION 10.(c) G.S. 163-182.7(c) reads as rewritten:

"(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second ~~Wednesday~~ Thursday after the election. If on that ~~Wednesday~~ Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections."

SECTION 10.(d) G.S. 163-111(c) reads as rewritten:

"(c) Procedure for Requesting Second Primary. –

(1) **(Effective with respect to primaries and elections held on or after January 1, 2004)** A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing ~~or by telegram~~ with the Executive Director of the State Board of Elections no later than 12:00 noon on the ~~seventh~~ ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
District Attorneys of the General Court of Justice,

United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing ~~or by telegram~~ with the chairman or director of the county board of elections no later than 12:00 noon on the ~~seventh~~ ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:
State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary."

SECTION 10.(e) G.S. 163-291(5) reads as rewritten:

"(5) The canvass of the primary and second primary shall be held on the ~~third~~ seventh day ~~(Sunday excepted)~~ following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5."

SECTION 10.(f) G.S. 163-291(6) reads as rewritten:

"(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the ~~Monday~~ Thursday following the canvass of the first primary."

SECTION 10.(g) G.S. 163-293(c) reads as rewritten:

"(c) The canvass of the first election shall be held on the ~~third~~ seventh day ~~(Sunday excepted)~~ after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the ~~Monday~~ Thursday after the result of the first election has been officially declared. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5."

SECTION 10.(h) G.S. 163-294(b) reads as rewritten:

"(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared

nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election. If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the ~~third~~ seventh day ~~(Sunday excepted)~~ following the primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5."

SECTION 10.(i) G.S. 163-300 reads as rewritten:

"**§ 163-300. Disposition of duplicate abstracts in municipal elections.**

Within ~~five~~ nine days after a primary or election is held in any municipality, the chairman of the county or municipal board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-182.6. One copy shall be retained by the county or municipal board of elections as a permanent record and one copy shall be filed with the city clerk."

SECTION 10.(j) G.S. 163-322(b) reads as rewritten:

"(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. ~~163-188.~~ 163-182.5. The canvass shall be conducted in accordance with Article ~~16~~ 15A of this Chapter."

SECTION 10.(k) G.S. 163-182.15 reads as rewritten:

"**§ 163-182.15. Certificate of nomination or election, or certificate of the results of a referendum.**

(a) Issued by County Board of Elections. – In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the county board ~~five~~ six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued five days after the protest is dismissed or denied by the county board of elections, unless that decision has been appealed to the State Board of Elections.

(2) The certificate shall be issued 10 days after the final decision of the State Board, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-182.14.

(3) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the

certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(b) Issued by State Board of Elections. – In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board ~~five~~ six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-14.

(2) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(c) Copy to Secretary of State. – The State Board of Elections shall provide to the Secretary of State a copy of each certificate of nomination or election, or certificate of the results of a referendum, issued by it. The Secretary shall keep the certificates in a form readily accessible and useful to the public."

SECTION 11. G.S. 163-227.2(a) reads as rewritten:

"(a) ~~Except as provided in subsection (a1) of this section, a person expecting to be absent from the county in which that person is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4)~~ Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote under the provisions of this section."

SECTION 12. Sections 1 and 10 of this act become effective January 1, 2004. The remainder of this act becomes effective when this act becomes law.

HOUSE BILL 1120:
Student Pollworkers/Other Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Alexander
Date:	May 22, 2003	**Summary by:**	William R. Gilkeson
Version:	H1120-CSRR-29 [v.6]		Committee Co-Counsel

SUMMARY: This PCS for House Bill 1120 would authorize the appointment of high school students 17 years and older as student election assistants, move the canvass from the 3rd to the 7th day after election day, and make several other election-law changes. Effective 1-1-04 for the student assistants and the canvass; other changes, effective when the bill becomes law.

Section 1 -- **Student Election Assistants.** Allows county boards of elections to appoint students of at least 17 years old as "student election assistants." The State Board of Elections would adopt guidelines as to how the student election assistants would be appointed. The students would have to be U.S. citizens, residents of the county, enrolled in a secondary school (including a home school) with an exemplary academic record, be recommended by the principal or director of the school, and have the consent of a parent, legal custodian,or guardian. The student election assistants would work at the voting place under the supervision of the election judges there. Although they would not be precinct officials, they would receive the same training and pay as a precinct assistant. There could not be more than 2 of them per precinct. (The Help America Vote Act of 2002 (HAVA) contains a provision creating a "Help America Vote Foundation" whose purpose is to "mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants (to the extent permitted under applicable State law)." The Foundation must also establish cooperative efforts between election officials, educational agencies, and nonprofits. It can accept private donations. HAVA authorizes the appropriation of $5 million for the foundation.)

Section 2 -- **Technical Change to Judicial Public Financing Act.** Makes a technical change to the statute setting up voluntary public financing of appellate judicial candidates. That statute *(163-278.67)* entitles a candidate for appellate judge who has volunteered to abide by the fundraising and spending restrictions of the program to receive "rescue funds" if the candidate's opponent spends in excess of the limitation, or if someone makes an independent expenditure in opposition to the candidate in the program, or in support of an opponent of that candidate. Another statute *(163-278.66)* sets up a reporting requirement of independent expenditures to make that work, but the language is not quite parallel: The reporting statute requires reporting of independent expenditures "in support of or opposition to a certified candidate." This section makes the language in the rescue funds statute and the reporting statute parallel.

Section 3 -- **No Extra Compensation of Election Officials.** Provides that if an election official is being paid an hourly wage or fee on election day and the official is performing additional election duties away from the assigned precinct, the official will be entitled to no additional compensation for the extra work other than reimbursement for expenses.

Section 4 -- **Technical Change to Primary Vacancy Statute.** Makes a technical change to the statute about the death of a candidate in a primary. The current language talks about two candidates filing for a "single office." Because all candidates file for only one office, a change is made to "single-seat office" to clarify that the statute is referring to a race in which only one is to be nominated.

Section 5 -- **Definition of "Referendum."** Broadens the definition of "referendum" in the Campaign Reporting Act to include a ballot item triggered by an initiative that is authorized by local act or city charter. Recall elections are specifically excluded from the definition of referendum. One of the consequences of a vote being a referendum is that contribution limits and corporate/union contribution restrictions do not apply – courts have said they cannot apply because no candidate is involved. With a recall vote, a candidate or candidates would be involved.

Section 6 -- **Conforming Change on Address Confidentiality -- Jurors.** The 2001 General Assembly enacted legislation designed to protect people in danger of being stalked and threatened – it required custodians of public records about these people to keep their addresses confidential. Election boards are covered by the new confidentiality requirement with respect to addresses of registered voters. This section extends that confidentiality to the disclosure of registered voters' addresses to the county jury commissions.

Section 7 -- **Technical Change to Petition Statutes.** Current law prohibits signing someone else's name to a petition that has a legal effect. Doing so is a Class 2 misdemeanor. G.S. 163-221 contains a list of the types of petitions that are included, but inadvertently petitions for write-in candidates was left out. This section remedies that omission.

Section 8 -- **Technical Change to New Statute on New Elections.** The SBOE has the sole authority in the election system to order a new election. The SBOE may order a new election only if 4 of its 5 members vote to do so, guaranteeing at least some bipartisan agreement. The standards for new elections are basically one of two:

- "The Math." That irregularities affected more votes than the margin of victory, rendering the outcome uncertain mathematically.
- "The Cloud." That irregularities occurred to such an extent that they taint the entire election and cast doubt on its fairness.

In the election law rewrite of 2001, the new G.S. 163-182.13 makes clear that both the Math and the Cloud are still standards for a new election, but the new 163-182.14 concerning appeals is not parallel. Sections 8.(a) and 8.(b) change both statutes to make them parallel.

Section 9 -- **Conforming Change: Presidential Primary/New Filing Period.** The general candidate filing deadline was recently moved from the 1st Monday in February to the last business day in February. SBOE designation of presidential primary candidates is still on the 1st Tuesday in February, formerly the day after the candidate filing deadline. That was not changed in 2001 when the filing deadline was moved. ***Section 9.(a) moves the SBOE presidential primary designation day to the 1st Tuesday in March.*** Current law directs the SBOE to designate for a party's presidential primary all candidates who have qualified to receive matching funds under the federal public financing program for presidential candidates. But other candidates may get on the presidential primary ballot if they collect 10,000 signatures on petitions and submit them to the SBOE by the day the SBOE meets to designate the candidates. ***Section 9.(b) moves that petition filing deadline to the day before the designation day.***

Section 10 -- **Moving Canvass Date from 3rd to 7th Day after Election.** Currently the county canvass (the day when the county board of elections meets to certify the official results of the vote) is the third day after the primary or election. It is usually the Friday after a Tuesday election. The main thrust of Section 10 is to move that canvass forward to the seventh day after the election, the next Tuesday, on the theory that boards of elections will need more time to count the additional provisional ballots required by HAVA. That change is in Section 10.(a). But moving the canvass has a ripple effect on the rest of the post-election schedule, necessitating Sections 10.(b) through 10.(k)

Sec. #	Event	Date under current law	Date under H 1120
10.(a)	Canvass Day	3rd day after election – 11-5-04 3rd day after primary – 5 –7-04	7th day after election – 11-9-04 7th day after primary – 5-11-04
10.(b)	Demand Deadline for Mandatory Recount in County Race	4th day after election canvas – 11-9-04 4th day after primary canvass – 5-11-04	1 day after election canvass – 11-10-04 1 day after primary canvass -- 5-12-04
10.(c)	Demand Deadline for Mandatory Recount in Multi-County Race	2nd Wed. after election – 11-10-04 2nd Wed. after primary -- 5-12-04	2nd Thurs. after election – 11-11-04 2nd Thurs. after primary – 5-13-04
10.(d)	Demand Deadline for 2nd Primary	7th day after primary – 5-11-04	9th day after primary – 5-13-04
10.(e)	Canvass Day for Municipal Partisan Primary and Second Primary	3rd day after primary – 9-30-05 3rd day after 2nd primary – 10-21-05	7th day after primary – 10-4-05 7th day after 2nd primary – 10-25-05
10.(f)	Demand Deadline for Municipal Partisan Second Primary	Monday after canvass – 10-3-05	Thursday after canvass – 10-6-05
10.(g)	Canvass and Demand Deadline for Municipal Nonpartisan Runoff	Canvass 3rd day after election – 10-14-05 Demand Mon. after canvass – 10-17-05	Canvass 7th day after election – 10-18-05 Demand Thurs. after canvass – 10-20-05
10.(h)	Canvass for Municipal Nonpartisan Primary	3rd day after primary – 10-14-05	7th day after primary – 10-18-05
10.(i)	Municipal Abstract Due to SBOE	5th day after election – 11-13-05	9th day after election – 11-17-05
10. (j)	Canvass for Nonpartisan Judicial Primary	3rd day after primary – 5-7-04	7th day after primary – 5-11-04
10.(k)	Issuance of Certificate	County: 5th day after canvass Multi-county: 5th day after canvass	County: 5th day after canvass Multi-county: 5th day after canvass

Section 11 -- **Correction to One-Stop Statute.** In 2001 the General Assembly voted to remove the excuse requirement from all absentee voting – one-stop and mail. However, through a drafting oversight in 2001, some language was inadvertently left in the statute that leaves the appearance that excuses are still required for one-stop voting. This section removes that nonconforming language, making clear that no excuse is required for a person to vote one-stop, as the General Assembly intended and as statute was enforced in the 2002 election.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1120

Short Title:	H.S. Students as Pollworkers.	(Public)
Sponsors:	Representatives Alexander; and Insko.	
Referred to:	Election Law and Campaign Finance Reform.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE APPOINTMENT OF CERTAIN HIGH SCHOOL STUDENTS AS PRECINCT ASSISTANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-42 reads as rewritten:

"**§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.**

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the

qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appointed as an election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.

(2) Be a resident of the county in which the student is appointed.

(3) Be enrolled in a secondary educational institution with an exemplary academic record as determined by that institution.

(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.

(5) Have the consent of a parent, legal custodian, or guardian.

No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as any other election assistant and shall be compensated in the same manner as other election assistants. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

SECTION 2. This act becomes effective January 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 760
PROPOSED COMMITTEE SUBSTITUTE S760-CSRR-27 [v.6]

6/1/2003 10:49:57 PM

Short Title: Local Campaign Finance Options. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GRANTS FROM UNIFORM PROGRAMS FOR PUBLIC CAMPAIGN FINANCING DO NOT CONSTITUTE "CONTRIBUTIONS" AND ARE NOT SUBJECT TO RESTRICTIONS ON CONTRIBUTIONS; TO CLARIFY THAT GOVERNMENTS IN CITIES AND COUNTIES OF A CERTAIN SIZE ARE AUTHORIZED TO CONDUCT THOSE PROGRAMS; TO GRANT GOVERNMENTS IN CITIES AND COUNTIES OF A CERTAIN SIZE AUTHORITY TO SET CONTRIBUTION LIMITS AT $1,000 FOR LOCAL OFFICES RATHER THAN THE STATEWIDE LIMIT OF $4,000; AND TO APPROPRIATE FUNDS FOR AND MANDATE A STUDY OF LOCAL PUBLIC CAMPAIGN FINANCING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such

as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.' The term 'contribution' does not include a grant from a governmental entity under a uniform program of grants to the campaigns of candidates for elective office within the jurisdiction of that governmental entity if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the government, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes. Grants pursuant to such a program are not subject to the contribution limitations of G.S. 163-278.13 and the prohibitions on corporate contributions of G.S. 163-278.15 or 163-278.19, but shall be reported as if they were contributions in all campaign reports required by law to be filed by the campaigns receiving the grants."

SECTION 2. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-499. Uniform, nondiscriminatory program of public financing of election campaigns.**

A governing body of a county with a population exceeding 80,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for county office in that county if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the county, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for permissible campaign-related expenditures in accordance with guidelines published pursuant to G.S. 163-278.64(d)(5) or other guidelines published by the State Board of Elections.

A governing body of a city with a population exceeding 40,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for city office in that city if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the city, (ii) the criteria are drawn to further

the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for permissible campaign-related expenditures in accordance with guidelines published pursuant to G.S. 163-278.64(d)(5) or other guidelines published by the State Board of Elections.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 3. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-500. Authority to set political contribution limit at $1,000 for local office.**

A governing body of a county with a population exceeding 80,000 according to the most recent decennial federal census may substitute one thousand dollars ($1,000) for the dollar amount provided in G.S. 163-278.13(a) and (b) as a contribution limit with respect to elections for county offices in that county.

A governing body of a city with a population exceeding 40,000 according to the most recent decennial federal census may substitute one thousand dollars ($1,000) for the dollar amount provided in G.S. 163-278.13(a) and (b) as a contribution limit with respect to elections for city offices in that city.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 4. G.S. 153A-445 reads as rewritten:

"**§ 153A-445. Miscellaneous powers found in Chapter 160A.**

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. – Joint Exercise of Powers.
(2) Chapter 160A, Article 20, Part 2. – Regional Councils of Governments.
(3) G.S. 160A-487. – Financial support for rescue squads.
(4) G.S. 160A-488. – Art galleries and museums.
(5) G.S. 160A-492. – Human relations programs.
(6) G.S. 160A-497. – Senior citizens programs.
(7) G.S. 160A-489. – Auditoriums, coliseums, and convention and civic centers.
(8) G.S. 160A-498. – Railroad corridor preservation.
(9) G.S. 160A-499. – Uniform, nondiscriminatory program of public financing of election campaigns.
(10) G.S. 160A-500. – Authority to set political contribution limit at $1,000 for local office.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties."

SECTION 5. No later than 18 months after this act becomes effective, the State Board of Elections shall complete a study of a variety of public campaign

financing programs for local government elections in the United States, prepare a description of the basic elements generally present, and compile a collection of reference materials for local governments in North Carolina to use in designing their programs. Of the funds appropriated to the State Board of Elections for the 2003-2004 fiscal year, the sum of fifteen thousand dollars ($15,000) shall be used for this purpose.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 760:
Local Campaign Finance Options.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	June 3, 2003	**Summary by:**	William R. Gilkeson
Version:	S760-CSRR-27[v.6]		Committee Co-Counsel

SUMMARY: This PCS for Senate Bill 760 gives express authority to counties over 80,000 population and cities over 40,000 to the following:

- ***Establish and appropriate funds for uniform public financing programs for candidates for local offices. The bill would also clarify that grants from such a program are not "contributions" subject to the $4,000 limit.***
- ***Set a lower contribution limit for local races at $1,000 per donor per donee per election rather than the statewide standard of $4,000.***

CURRENT LAW: Currently, NC law sets a general limit on contributions of $4,000 per donor per donee per election. *G.S. 163-278.13.* Unlike some States, NC does not scale contribution limits differently according to the size of the electorate. NC prohibits corporate contributions. *G.S. 163-278.19.*

Counties are authorized to levy property taxes to "provide for all federal, State, district and county elections." *G.S. 153A-149.* Cities are authorized to levy property taxes to "provide for all city elections and referendums." *G.S. 160A-209.*

BILL ANALYSIS: The PCS adds language to the definition of "contribution" in the Campaign Finance Act to make clear that a grant to a candidate from a governmental entity under a uniform public campaign financing program is not a "contribution" and is not subject to restrictions on contributions, but must be reported like contributions. *Section 1 of the bill.*

The PCS adds to the G.S. Chapters on cities and counties a provision that expressly grants the governing bodies of counties over 80.000 and cities over 40,000 the authority to appropriate funds for a uniform program of grants to county or city offices if:

- The grants are available to candidates who demonstrate public support and voluntarily accept strict fund-raising and spending restrictions in accordance with set criteria.
- The criteria are drawn to further the public purpose of free elections and do not discriminate on the basis of race, creed, position on issues, incumbency/non-incumbency, or party affiliation.
- The grants are restricted to campaign-related uses in accord with State Board of Elections guidelines. *Secs. 2 and 4.*

The PCS also adds the express authorization for counties over 80,000 and cities over 40,000 to opt for a contribution limit of $1,000 per donor per donee per election, rather than the statewide limit of $4,000. *Secs. 3 and 4.*

In Section 5, the bill would direct the State Board of Elections to use $15,000 to study public financing programs for local government campaigns throughout the US and compile a collection of reference materials for local governments to use.

BACKGROUND: Some local governments in the NC have expressed interest in developing public financing for local campaigns or setting lower contribution or reporting limits. The Town of Cary actually established a public financing program, administering grants in the 2001 municipal elections. That program was challenged, and two candidates who received grants in excess of $4,000 were ordered by the State Board of Elections to forfeit the excess. That decision was appealed to Superior Court.

On the other side of this sheet is a list, in descending order of population, of NC counties with more than 70,000 population and NC cities with more than 30,000 population. The source is the 2000 Census.

SENATE BILL 760

Counties over 70,000 (bill sets 80,000 threshold)		Cities over 30,000 (bill sets 40,000 threshold)	
Mecklenburg	**695,454**	**Charlotte**	**540,828**
Wake	**627,846**	**Raleigh**	**276,093**
Guilford	**421,048**	**Greensboro**	**223,891**
Forsyth	**306,067**	**Durham**	**187,035**
Cumberland	**302,963**	**Winston-Salem**	**185,776**
Durham	**223,314**	**Fayetteville**	**121,015**
Buncombe	**206,330**	**Cary**	**94,536**
Gaston	**190,365**	**High Point**	**85,839**
New Hanover	**160,307**	**Wilmington**	**75,838**
Onslow	**150,355**	**Asheville**	**68,889**
Davidson	**147,246**	**Jacksonville**	**66,715**
Catawba	**141,685**	**Gastonia**	**66,277**
Pitt	**133,798**	**Greenville**	**60,476**
Cabarrus	**131,063**	**Concord**	**55,977**
Alamance	**130,800**	**Rocky Mount**	**55,893**
Randolph	**130,454**	**Chapel Hill**	**48,715**
Rowan	**130,340**	**Burlington**	**44,917**
Union	**123,677**	**Wilson**	**44,405**
Robeson	**123,339**	Goldsboro	39,043
Iredell	**122,660**	Hickory	37,222
Johnston	**121,965**	Kannapolis	36,910
Orange	**118,227**		
Wayne	**113,329**		
Cleveland	**96,287**		
Rockingham	**91,928**		
Craven	**91,436**		
Harnett	**91,025**		
Henderson	**89,173**		
Burke	**89,148**		
Nash	**87,420**		
Caldwell	77,415		
Moore	74,769		
Wilson	73,814		
Brunswick	73,143		
Surry	71,219		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 760

Short Title:	Local Campaign Finance Reform.	(Public)
Sponsors:	Senators Gulley; Allran, Bingham, Carrington, Dalton, Dannelly, Garrou, Hagan, Hartsell, Horton, Kinnaird, Metcalf, Purcell, Rand, Reeves, Shaw, and Soles.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GRANTS FROM UNIFORM PROGRAMS FOR PUBLIC CAMPAIGN FINANCING DO NOT CONSTITUTE "CONTRIBUTIONS" AND ARE NOT SUBJECT TO RESTRICTIONS ON CONTRIBUTIONS; TO CLARIFY THAT CERTAIN CITY AND COUNTY GOVERNMENTS ARE AUTHORIZED TO CONDUCT THOSE PROGRAMS; TO GRANT CITY AND COUNTY GOVERNMENTS LIMITED AUTHORITY TO SET STRICTER LIMITS THAN THOSE IN EFFECT STATEWIDE FOR CONTRIBUTION LIMITS AND REPORTING; AND TO MANDATE AND APPROPRIATE FUNDS FOR A STUDY OF LOCAL PUBLIC CAMPAIGN FINANCING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials,

wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.' The term 'contribution' does not include a grant from a governmental entity under a uniform program of grants to the campaigns of candidates for elective office within the jurisdiction of that governmental entity if: (i) the grants are available to any candidate for office who meets a set of criteria drawn by the government, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes. Grants pursuant to such a program are not subject to the contribution limitations of G.S. 163-278.13 and the prohibitions on corporate contributions of G.S. 163-278.15 or 163-278.19, but shall be reported as if they were contributions in all campaign reports required by law to be filed by the campaigns receiving the grants."

SECTION 2. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-499. Uniform, nondiscriminatory program of public financing of election campaigns.**

A governing body of a county with a population exceeding 50,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for county office in that county if: (i) the grants are available to any candidate for an office who meets a set of criteria drawn by the county, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes.

A governing body of a city with a population exceeding 30,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for city office in that city if: (i) the grants are available to any candidate for an office who meets a set of criteria drawn by the city, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 3. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-500. Authority to set stricter political contribution limits and campaign reporting thresholds for local office.**

A governing body of a county may set contribution limits at a dollar amount lower than those provided in G.S. 163-278.13 with respect to elections for county offices in that county. A governing body of a county may set a lower dollar amount than set forth in G.S. 163-278.8 as a threshold for reporting the name, address, and principal occupation of a contributor, as those items are prescribed to be reported in G.S. 163-278.11, with respect to elections for county offices in that county.

A governing body of a city may set contribution limits at a dollar amount lower than those provided in G.S. 163-278.13 with respect to elections for city offices in that city. A governing body of a city may set a lower dollar amount than set forth in G.S. 163-278.8 as a threshold for reporting the name, address, and principal occupation of a contributor, as those items are prescribed to be reported in G.S. 163-278.11, with respect to elections for city offices in that city.

This section does not authorize a county or city to set a higher dollar amount than the general law in Chapter 163 of the General Statutes as either a contribution limit or a threshold for reporting. This section does not authorize a county or city to set a contribution limit lower than two hundred dollars ($200.00) for contribution from one source to one recipient per election. This section does not authorize a county or city to set a reporting threshold for a contributor at lower than twenty dollars ($20.00).

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 4. G.S. 153A-445 reads as rewritten:

"**§ 153A-445. Miscellaneous powers found in Chapter 160A.**

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. – Joint Exercise of Powers.

(2) Chapter 160A, Article 20, Part 2. – Regional Councils of Governments.

(3) G.S. 160A-487. – Financial support for rescue squads.

(4) G.S. 160A-488. – Art galleries and museums.

(5) G.S. 160A-492. – Human relations programs.

(6) G.S. 160A-497. – Senior citizens programs.

(7) G.S. 160A-489. – Auditoriums, coliseums, and convention and civic centers.

(8) G.S. 160A-498. – Railroad corridor preservation.

(9) G.S. 160A-499. – Uniform, nondiscriminatory program of public financing of election campaigns.

(10) G.S. 160A-500. – Authority to set stricter political contribution limits and campaign reporting thresholds for local office.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties."

SECTION 5. No later than 18 months after this act becomes effective, the State Board of Elections shall complete a study of a variety of public financing programs for local government elections in the United States, prepare a description of the basic elements generally present, and compile a collection of reference materials for local governments in North Carolina to use in designing their programs. There is appropriated from the General Fund to the State Board of Elections for the 2003-2004 fiscal year the sum of fifteen thousand dollars ($15,000) for this purpose.

SECTION 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

6-3-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Frye	Democracy NC
Chase Foster	Democracy NC
Hal Miller	NCACCT
Molly Ryan	NCSBA
Brian Walker	Bill Drafting
Jennifer Williston	Bill Drafting
Gloria Hobson	Conwood
Jim Tucker	Conwood
Carol Resar	Staff
Katherine Joyce	NCASA
Jim Ayer	SBE

VISITOR REGISTRATION SHEET

Jt-L Committee — 6/3/03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PORTER POE
Anne Wilson	NCCADV
Jessica Dandy	Covenant w/ NC's Children
Tommy Hamlin	Enterprise Rent a Car
Jack Betts	Charlotte Observer
R. Paul Wilms	NCMBA
Guy Mc[illegible]	NC AGO
Will Pu[illegible]	NCAGO
Alan Ramquist	NCIMS
Gary O. Bartlett	State Board of Elections
Ken Westbrook	State Board of Elections

VISITOR REGISTRATION SHEET

J-1 Committee — 6-3-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Brooks	
Bill Brooks	NCFPC
Julia Cummings	Intern
Abby Youngkin	Intern
Keesha White	DJJDP/CPSV
LaToya Fore	DJJDP - CPSV
Annie Gao	DJJDP
Price Harrison	Brampton NC
Reggie Mathis	Democracy NC
Beth Messersmith	Democracy NC
VERONICA JOICE	DEMOCRACY NC

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Waughtal	NCNW
Sam Page	Sheriff Rockingham Co.
Jimmy Thomas	Rockingham Co. Sheriff Dept
Ronald E Hewett	Sheriff Brunswick Co.
Chris Batten	Sheriff Columbus Co.
Floyd Lewis	General Statutes Commission
Rocky Bevacqua	NC CBI
Roger Bone	Bar Assoc.
Tim Mooney	NC Home Builders
BILL HOGLE	JORDAN PRICE
Franklin Dalton	Bell & Assoc.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Meyer	NCACC
Kim Hibbard	NCLM
Bob Hall	Democracy North Carolina
George Millsaps	DOA
Amy Dobson	NC State Watch
Peggy Myers	
[illegible]	[illegible]
Bob Phillips	NCCC
Cassandra Skinner	CCPS
Von Williams	CCPS
Cam Cook	BPOHL

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 5, 2003	10:00 AM	1027 LB

REVISED NOTICE/ HB-1126 REMOVED & HB-1114 &HB-1171 ADDED

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB-408	Amend Secret Peeping Law	Rep. Hackney
HB-743	Nurse Testimonial Privilege	Rep. Nesbitt/Walend/Glazier
HB-787	Reporting By Federal Pac	Rep. Mitchell
HB-926	Assault In The Presence Of A Child	Rep. Dickson
HB-1114	School Volunteer Records Are Confidential	Rep. Saunders
HB-1171	Amend Hazing Laws	Rep. Dickson
SB-44	Revenue Estimates Limited	Sen. Shubert

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

June 5, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:12 a.m. with eleven members present. He introduced Pages, Laura Cowan from Raleigh, NC and Ian Presley from Southern Pines, NC.

HB-1171 (Amend Hazing Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Margaret Dickson explained changes to the bill. See attached Bill Summary. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

HB-926 (Assault In The Presence Of A Child) Committee Substitute was introduced by Senator Clodfelter. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Margaret Dickson explained that the bill provides that if a person commits (1) an assault with a deadly weapon or that inflicts serious injury, (2) on a person with whom the offender has a personal relationship, and (3) the assault is in the presence of a minor, then the perpetrator is subject to a mandatory minimum sentence of thirty days active punishment. See Bill Summary for further information. Staff Attorney, Hal Pell explained the changes in more detail. Senator Horton had a question. Mr. Pell and Senator Clodfelter answered the question. Senator Cecil Hargett moved for a Favorable Report. All members voted yes. Motion carried.

HB-787 (Reporting By Federal Pac) Committee Substitute was introduced by Senator Clodfelter. Senator Ham Horton moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Franklin Mitchell explained that the bill would require that when specifying the reporting requirements of federal political committees, the State Board of Elections may not specific requirements that are more stringent than the reporting requirements of NC political committees, unless the federal committee gives more that four thousand dollars for any election to any NC candidate or political committee. See Bill Summary for further information. Senator Jeanne Lucas had a question. Rep. Mitchell answered the question. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

HB-408 (Amend Secret Peeping Law) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Joe Hackney explained that the bill would modify the secret peeping statute. See Bill Summary for further information. Senator Phillip Berger had a question. Mr. Charles McDassis, Legal Counsel for Private Protection Services Board spoke on the bill. Ms. Ruth Reynolds, President NC Private Investigators spoke briefly on the bill. Senator Lucas had a question. Ms. Reynolds answered the question. Senator Berger offered an Amendment to the bill on pg.3, line 1, and moved for adoption of the Amendment. All members voted yes. Amendment adopted. See attached Amendment. Senator Ham Horton moved for a Favorable Report as amended. All members voted yes. Motion carried.

HB-743 (Nurse Testimonial Privilege) was introduced by Senator Clodfelter. In the absence of bill sponsor, Representative Martin Nesbitt, Staff Attorney, Walker Reagan explained that the bill provides that nurses shall not be required to disclose information acquired while rendering professional nursing services except in cases where the where the presiding judge determines that disclosure is necessary for the proper administration of justice and disclosure is not prohibited by other statute or rule. See attached Bill Summary. Mr. Jeff Hunt, District Attorney NC Conference spoke on the bill. Mr. Howard Cramer, General Counsel, NC Board of Nurses spoke on the bill. Senator's Phillip Berger, Jeanne Lucas and Charlie Albertson had questions. Mr. Hunt and Mr. Cramer answered the questions. Senator Clodfelter stated that the bill would be discussed, but not voted on at this time. Bill was displaced and will be heard at a future meeting.

HB-1114 (School Volunteer Records Are Confidential) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff Attorney, Walker Reagan explained the bill in the absence of bill sponsor, Representative Drew Saunders. He explained that the bill would make school records regarding volunteers, former volunteers, and persons applying to be volunteers, not public records. See Bill Summary for further information. Senator Phillip Berger offered an Amendment on pg. 1, line 22and moved for adoption of the Amendment. All members voted yes. Amendment adopted. See attached Amendment. Senator Lucas had a question. Mr. Peyton Maynard, Representative for Charlotte/Mecklenburg County Board of Education and Mr. Jon Bussian, Attorney spoke on the bill and answered the question for Senator Lucas. Senator Clodfelter said the bill would be displaced and heard at a future meeting.

Being no further business the meeting adjourned at 10:56 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, June 09, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **787** Reporting by Federal PAC.

Draft Number:	PCS 50290
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **408** Amend Secret Peeping Law.

Draft Number:	PCS 70341
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **926** Assault in the Presence of Child.

Draft Number:	PCS 70342
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS #1) **1171** Amend Hazing Laws.

Draft Number:	PCS 60372
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

LAST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1171

Committee Substitute Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1171-CSRK-65 [v.1]

6/3/2003 3:52:12 PM

Short Title: Amend Hazing Laws. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE LAW PROHIBITING HAZING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-35 reads as rewritten:

"**§ 14-35. Hazing; definition and punishment.**

It ~~shall be~~ is unlawful for any student in attendance at any university, ~~college~~college, or school in this State to engage in ~~what is known as~~ hazing, or to aid or abet any other student in the commission of this offense. For the purposes of this section hazing is defined as follows: ~~"to annoy any student by playing abusive or ridiculous tricks upon him, to frighten, scold, beat or harass him, or to subject him to personal indignity."~~ "to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group." Any violation of this section shall constitute a Class 2 misdemeanor."

SECTION 2. G.S. 14-36 is repealed.

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 1171:
Amend Hazing Laws.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Dickson
Date:	June 5, 2003	**Summary by:**	H. Alan Pell
Version:	PCS H1171-csrk-65		Committee Co-Counsel

SUMMARY: ***This bill would re-define the term "hazing"; removes the sanction of mandatory expulsion from school as the penalty for hazing; and removes the criminal sanction against a school official for the failure of the official to expel a student who has been convicted of hazing under the criminal laws.***

CURRENT LAW: A college or school official, with the responsibility to expel a student convicted of hazing, commits a Class 1 misdemeanor if the official does not expel the student.

BILL ANALYSIS:

Section 1: Clarifies that the student must be in attendance at a university, college, or school in the State to be subject to criminal sanctions for hazing. Hazing is re-defined, and an additional requirement is added: that the hazing be incident to initiation, or as a prerequisite, to membership into a school group.

Section 2: Repeals G.S. 14-36, the statute that criminalizes the failure of a school official to expel a student that has been convicted of hazing:

> **§ 14-36. Expulsion from school; duty of faculty to expel.**
> Upon conviction of any student of the offense of hazing, or of aiding or abetting in the commission of this offense, he shall, in addition to any punishment imposed by the court, be expelled from the college or school he is attending. The faculty or governing board of any college or school charged with the duty of expulsion of students for proper cause shall, upon such conviction at once expel the offender, and a failure to do so shall be a Class 1 misdemeanor.

Section 3: The act would be effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **1**

HOUSE BILL 1171

Short Title:	Amend Hazing Laws.	(Public)
Sponsors:	Representative Dickson.	
Referred to:	Rules, Calendar, and Operations of the House.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING HAZING.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law.

LA:7

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 926

Committee Substitute Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H926-PCS70342-RK-64

Short Title: Assault in Presence of Minor/Enhance Penalty. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PENALTY FOR AN ASSAULT IN THE PRESENCE OF A MINOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-33 is amended by adding a new subsection to read:

"(d) Notwithstanding the dispositions in G.S. 15A-1340.23(c), any person who commits a violation of subdivision (c)(1) of this section on a person with whom the person has a personal relationship, and in the presence of a minor, shall be sentenced to an active punishment of no less than 30 days.

(1) Definitions.

a. "Personal relationship" is as defined in G.S. 50B-1(b).

b. "In the presence of a minor" means that the minor was in a position to have observed the assault.

c. "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault.

(2) A person committing a second or subsequent violation of subsection (d) shall be sentenced to an active punishment of no less than 50 days."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 926:
Assault in the Presence of a Child.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Dickson
Date:	June 5, 2003	**Summary by:**	H. Alan Pell
Version:	PCS H926-csrk-64		Committee Co-Counsel

SUMMARY: ***This bill provides that if a person commits (1) an assault with a deadly weapon or that inflicts serious injury, (2) on a person with whom the offender has a personal relationship, and (3) the assault is in the presence of a minor, then the perpetrator is subject to a mandatory minimum sentence of 30 days active punishment. The act is effective December 1, 2003, and would apply to offenses committed on or after that date.***

CURRENT LAW: G.S. 14-33 (c)(1) currently makes it a Class A1 misdemeanor for a person to commit an assault inflicting serious injury upon another person or to commit an assault using a deadly weapon. On a first offense, the court may sentence the offender to community service, an intermediate punishment, or active punishment. The sentence length is between 1 and 60 days.

BILL ANALYSIS: The bill would require a mandatory minimum sentence of 30 days active punishment for a person convicted of the offense set forth in G.S. 14-33(c)(1) where additional circumstances are present:

- The offense was committed on a person with whom the offender has a personal relationship, and
- The assault occurs in the presence of a minor who is (1) residing with, under the care and supervision of, or has a personal relationship with, either the (2) person committing the assault, or the assault victim.

Within the meaning of the bill, a minor is any person who has not reached the age of 18 years. Personal relationship means a relationship wherein the parties involved:

- Are current or former spouses;
- Are persons of opposite sex who live together or have lived together;
- Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren;
- Have a child in common;
- Are current or former household members;
- Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship.

"Assault" is defined at common law as "an overt act or attempt, or the unequivocal appearance of attempt, with force or violence, to immediately physically injure another person, with the show of force or menace of violence being sufficient to put a reasonable person in fear of immediate physical injury." Farb, North Carolina Crimes, Fifth Edition. There is currently an offense of Assault on a Child under 12", at G.S. 14-33(c)(3). The offense is a Class A1 misdemeanor.

H926-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 926

Short Title:	Assault in the Presence of Child.	(Public)
Sponsors:	Representatives Dickson; B. Allen, Earle, England, Farmer-Butterfield, Glazier, Goforth, Insko, Jeffus, Lewis, Lucas, Parmon, Rapp, Weiss, and Yongue.	
Referred to:	Judiciary III.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ASSAULT IN THE PRESENCE OF A CHILD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-33(c) is amended by adding a new subdivision to read:

"(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

...

(7) Commits an assault with a deadly weapon or an assault that inflicts serious injury on a person with whom he or she has a personal relationship in the presence of a minor who is residing with or in the custody of the person assaulted. The following definitions shall apply in this subdivision:

a. "In the presence of a minor" means:

1. In the physical presence of the minor; or

2. Having knowledge that a child is present and may see or hear the offense.

b. "Minor" is as defined in G.S. 48A-2.

c. "Personal relationship" is as defined in G.S. 50B-1(b)."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

LAST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 787
PROPOSED SENATE COMMITTEE SUBSTITUTE H787-PCS50290-RR-33

Short Title: Reporting by Federal PAC. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH EQUITY IN REPORTING REQUIREMENTS BETWEEN FEDERAL POLITICAL COMMITTEES AND NORTH CAROLINA POLITICAL COMMITTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7A reads as rewritten:

"**§ 163-278.7A. Gifts from federal political committees.**

It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing ~~committee:~~ committee does all the following:

(1) Is registered with the State Board of Elections consistent with the provisions of this ~~Article;~~ Article.

(2) Complies with reporting requirements specified by the State Board of ~~Elections;~~ Elections. Those requirements shall not be more stringent than those required of North Carolina political committees registered under this Article, unless the federal political committee makes any contribution to a North Carolina candidate or political committee in any election in excess of four thousand dollars ($4,000) for that election. 'Election' shall be as defined in G.S. 163-278.13(d).

(3) Makes its contributions within the limits specified in this ~~Article; and~~ Article.

(4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary."

SECTION 2. This act is effective when the State Board of Elections develops the technological capacity to implement it, but no later than January 1, 2004.

HOUSE BILL 787:
Reporting by Federal PAC.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Mitchell
Date:	June 5, 2003	**Summary by:**	William R. Gilkeson
Version:	H787-CSRR-33[v.4]		Committee Co-Counsel

SUMMARY: House Bill 787 would require that when specifying the reporting requirements of federal political committees, the State Board of Elections (SBOE) may not specific requirements that are more stringent than the reporting requirements of North Carolina political committees, unless the federal committee gives more than $4,000 for any election to any NC candidate or political committee. Effective when the SBOE develops the technology to implement the change, but no later than 1-1-04.

CURRENT LAW: Federal political committees are allowed to make contributions to a North Carolina candidate or political committee, provided the contributing federal political committee does certain things, including complying with the reporting requirements specified by the State Board of Elections. The State Board has specified that the reporting requirements for federal PACs are the following:

- A report of contributions to in-state North Carolina candidates and committees is due immediately – that is, within 10 days of making a contribution.
- The report is to be received in the SBOE Campaign Reporting Office within 10 days of the date of the contribution or oldest contribution not yet disclosed. A report bearing a U.S. postmark of the due date or an earlier date will be accepted as timely.
- Late filings result in penalty assessments as prescribed in G.S. 163-278.34.
- Any reports filed must disclose all contributions made to NC in-state candidates and committees, even when the federal law sets a higher threshold for contributions that must be reported by name.

North Carolina political committees, on the other hand, must follow a schedule set by statute. It basically consists of quarterly reports, with some contributions required to be reported within 48 hours if they are received after the last pre-election report.

North Carolina imposes, with certain exceptions, a contribution limit of $4,000 per contributor per recipient per election. A primary is one election, and a general election is another. A second primary counts as a third election only if the candidate involved is on the ballot in a second primary. *G.S. 163-278.13.*

BILL ANALYSIS: House Bill 787 would require that, when specifying the reporting requirements of federal political committees, the State Board may not specify requirements more stringent than those for NC political committees, unless the federal political committee makes any contribution in excess of $4,000 to a NC candidate or political committee. This change would mean that federal PACs that stayed within that $4,000 threshold would not be required to report every contribution within 10 days of receipt, but would follow something no more stringent than the modified quarterly reporting schedule as NC political committees. If a federal PAC exceeded the $4,000 threshold, the State Board could, but would not have to, require more frequent reporting.

BACKGROUND: The staff of the State Board of Elections has been urged by representatives of federal political committees to adopt a quarterly reporting schedule rather than the "10 days after every contribution" rule. The SBOE staff has said that it does not oppose the change, but that the change would require reworking its software – something it can do, but not until later this year. The bill becomes effective when the SBOE develops the technology to make the change, but no later than January 1, 2004. The SBOE staff says that is a feasible timetable.

HOUSE BILL 787:
Reporting by Federal PAC.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Mitchell
Date:	June 5, 2003	**Summary by:**	William R. Gilkeson
Version:	H787-CSRR-33[v.4]		Committee Co-Counsel

SUMMARY: House Bill 787 would require that when specifying the reporting requirements of federal political committees, the State Board of Elections (SBOE) may not specific requirements that are more stringent than the reporting requirements of North Carolina political committees, unless the federal committee gives more than $4,000 for any election to any NC candidate or political committee. Effective when the SBOE develops the technology to implement the change, but no later than 1-1-04.

CURRENT LAW: Federal political committees are allowed to make contributions to a North Carolina candidate or political committee, provided the contributing federal political committee does certain things, including complying with the reporting requirements specified by the State Board of Elections. The State Board has specified that the reporting requirements for federal PACs are the following:

- A report of contributions to in-state North Carolina candidates and committees is due immediately – that is, within 10 days of making a contribution.
- The report is to be received in the SBOE Campaign Reporting Office within 10 days of the date of the contribution or oldest contribution not yet disclosed. A report bearing a U.S. postmark of the due date or an earlier date will be accepted as timely.
- Late filings result in penalty assessments as prescribed in G.S. 163-278.34.
- Any reports filed must disclose all contributions made to NC in-state candidates and committees, even when the federal law sets a higher threshold for contributions that must be reported by name.

North Carolina political committees, on the other hand, must follow a schedule set by statute. It basically consists of quarterly reports, with some contributions required to be reported within 48 hours if they are received after the last pre-election report.

North Carolina imposes, with certain exceptions, a contribution limit of $4,000 per contributor per recipient per election. A primary is one election, and a general election is another. A second primary counts as a third election only if the candidate involved is on the ballot in a second primary. *G.S. 163-278.13.*

BILL ANALYSIS: House Bill 787 would require that, when specifying the reporting requirements of federal political committees, the State Board may not specify requirements more stringent than those for NC political committees, unless the federal political committee makes any contribution in excess of $4,000 to a NC candidate or political committee. This change would mean that federal PACs that stayed within that $4,000 threshold would not be required to report every contribution within 10 days of receipt, but would follow something no more stringent than the modified quarterly reporting schedule as NC political committees. If a federal PAC exceeded the $4,000 threshold, the State Board could, but would not have to, require more frequent reporting.

BACKGROUND: The staff of the State Board of Elections has been urged by representatives of federal political committees to adopt a quarterly reporting schedule rather than the "10 days after every contribution" rule. The SBOE staff has said that it does not oppose the change, but that the change would require reworking its software – something it can do, but not until later this year. The bill becomes effective when the SBOE develops the technology to make the change, but no later than January 1, 2004. The SBOE staff says that is a feasible timetable.

HOUSE BILL 787

Short Title:	Reporting by Federal PAC.	(Public)
Sponsors:	Representative Mitchell.	
Referred to:	Election Law and Campaign Finance Reform.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH EQUITY IN REPORTING REQUIREMENTS BETWEEN FEDERAL POLITICAL COMMITTEES AND NORTH CAROLINA POLITICAL COMMITTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7A reads as rewritten:

"**§ 163-278.7A. Gifts from federal political committees.**

It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing committee:

(1) Is registered with the State Board of Elections consistent with the provisions of this Article;

(2) Complies with reporting requirements specified by the State Board of ~~Elections;~~ Elections, which shall not be more stringent than those required of North Carolina political committees registered under this Article;

(3) Makes its contributions within the limits specified in this Article; and

(4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary."

SECTION 2. This act is effective when the State Board of Elections develops the technological capacity to implement it, but no later than January 1, 2004.

LNS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 408
Committee Substitute Favorable 3/27/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H408-CSRK-59 [v.2]

6/2/2003 5:29:51 PM

Short Title: Amend Secret Peeping Law. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202 reads as rewritten:

"**§ 14-202. Secretly peeping into room occupied by ~~female person.~~another person.**

(a) Any person who shall peep secretly into any room occupied by ~~a female person~~another person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section:

(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual.

(2) The term "room" shall include, but is not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.

(d) Unless covered by another provision of law providing greater punishment, any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room, for the purpose of arousing or gratifying the sexual desire of any person, shall be guilty of a Class I felony.

(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class I felony.

(f) Any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent shall be guilty of a Class I felony.

(g) Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section shall be guilty of a Class I felony.

(h) Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section shall be guilty of a Class H felony, if the dissemination is without the consent of the person in the photographic image.

(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

(j) If the defendant is placed on probation as a result of violation of this section:

(1) For a first conviction under this section, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(2) For a second or subsequent conviction under this section, the judge shall impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(k) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image and is entitled to recover from those persons actual damages, punitive damages, and reasonable attorneys' fees and other litigation costs reasonably incurred.

(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection (a) or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

(m) The provisions of subsections (a), (c), (e), (g), (h), and (k) of this section do not apply to:

(1) Law enforcement officers while discharging or attempting to discharge their official duties; or

(2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility.

(n) It is not the intent of this Act to affect the legal activities of those who are licensed pursuant to Chapter 74C, Private Protective Services, or Chapter 74D, Alarm Systems, of the General Statutes, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section."

SECTION 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for violation of G.S. 14-202(a) or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 408 DATE 5 June 03

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Berger
Sen.)

moves to amend the bill on page 3, line 6

( ) WHICH CHANGES THE TITLE

by deleting the words

"It is not the intent of this ~~[illegible]~~ Act to" ~~by~~ and by

substituting the words

"This Act does not".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 408 [PCS]: Amend Secret Peeping Law.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Hackney
Date:	June 5, 2003	**Summary by:**	H. Alan Pell
Version:	PCS H408-CSRK-59		Committee Co-Counsel

SUMMARY: House Bill 408 would modify the secret peeping statute.

CURRENT LAW: The current statute, G.S. 14-202, provides for a Class 1 misdemeanor for a person secretly peeping into a room occupied by a female person.

BILL ANALYSIS: **Section 1** of the bill would modify the current language of G.S. 14-202, and would add several new subsections as follows:

Subsection (a) is created from the original statute. The current language is modified to apply to secretly peeping into a room occupied by "another person", not just a female person.

Subsection (b) defines the term "photographic image" as any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission, or any digital image, of any individual. This subsection also defines "room" as including, but not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

Subsection (c) would provide for a Class A1 misdemeanor for any person secretly peeping into a room while in possession of any device which may be used to create a photographic image.

Subsection (d) would provide for a Class I felony for any person who, while secretly peeping into a room, uses any device to create a photographic image of another person in that room, for the purpose of arousing or gratifying the sexual desire of any person.

Subsection (e) would provide for a Class I felony for any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that person for the purpose of viewing the body of, or the undergarments worn by, that person without their consent.

Subsection (f) would provide a Class I felony for any person who, for the purpose of arousing or gratifying sexual desire, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image, with the intent to capture the image of another without their consent.

Subsection (g) would provide for a Class I felony for any person who possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section.

Subsection (h) would provide for a Class I felony for any person who, without consent, disseminates or allows to be disseminated images obtained as a result of the violation of this section.

Subsection (i) would provide punishment for a second or subsequent violation of this section at a level one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor and a second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

Subsection (j) would, for a first offense, allow the judge to impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that

evaluation. For a second or subsequent offense, the judge would be required to impose the psychological evaluation and treatment.

Subsection (k) would allow any person whose image is captured or disseminated a civil cause of action against the persons capturing or disseminating the image, or any person who procured another person to capture or disseminate the image. The plaintiff is allowed to recover actual damages, punitive damages, and reasonable attorney's fees and other litigation costs reasonably incurred.

Subsection (l) would allow the court to require someone who violates subsections (d), (e), (f), (g), or (h) of this section to register as a sex offender. The court would be allowed to require registration as a sex offender for a second or subsequent violation of subsections (a) or (c) of this section. In determining whether a person shall be required to register as a sex offender, the court shall consider whether the person is a danger to the community and whether requiring the person to register would further the purposes of sex offender registration.

Subsection (m) provides exceptions to subsections (a), (c), (e), (g), (h), and (k) of this section for law enforcement officers while discharging or attempting to discharge their official duties, and for personnel of the Department of Correction or local jails for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local jail.

Subsection (n) clarifies that the bill is not intended to regulate legal activities of persons engaged in the private protective services industry. [PCS adds this section to the House Bill].

Section 2 makes a conforming amendment to the sex offender registration statutes.

Section 3 provides that this act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

H408-smrk-01

Summary contribution by Susan Sitze, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 408

Short Title:	Amend Secret Peeping Law.	(Public)
Sponsors:	Representatives Hackney; Alexander, Justice, Justus, Stiller, and K. Williams.	
Referred to:	Judiciary I.	

March 12, 2003

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202 reads as rewritten:

"**§ 14-202. Secretly peeping into room occupied by ~~female person.~~another person.**

(a) Any person who shall peep secretly into any room occupied by ~~a female person~~another person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section:

(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission, or any digital image, of any individual.

(2) The term "room" shall include, but is not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.

(d) Unless covered by another provision of law providing greater punishment, any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room, for the purpose of arousing or gratifying the sexual desire of any person, shall be guilty of a Class I felony.

(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent, shall be guilty of a Class I felony.

(f) Any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent, shall be guilty of a Class I felony.

(g) Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section, shall be guilty of a Class I felony.

(h) Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section, shall be guilty of a Class I felony, if the dissemination is without the consent of the person in the photographic image.

(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

(j) If the defendant is placed on probation as a result of violation of this section:

(1) For a first conviction under this section, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(2) For a second or subsequent conviction under this section, the judge shall impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(k) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image, and is entitled to recover from those persons, actual damages, punitive damages, and reasonable attorneys' fees and other litigation costs reasonably incurred.

(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection (a) or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

(m) The provisions of subsections (a), (c), (e), (g), (h), and (k) of this section do not apply to:

(1) Law enforcement officers while discharging or attempting to discharge their official duties; or

(2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility."

SECTION 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for violation of G.S. 14-202(a) or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 743
Second Edition Engrossed 4/21/03

Short Title:	Nurse Testimonial Privilege.	(Public)
Sponsors:	Representatives Nesbitt, Walend (Primary Sponsors); and Glazier.	
Referred to:	Judiciary II.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NURSE TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.13. Nurse privilege.**

No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional nursing services, and which information was necessary to enable that person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 743:
Nurse Testimonial Privilege.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representatives Nesbitt and Walend
Date:	June 5, 2003		
Version:	Second Edition	**Summary by:**	O. Walker Reagan, Committee Co-Counsel

SUMMARY: ***House Bill 743 provides that nurses shall not be required to disclose information acquired while rendering professional nursing services except in cases where the presiding judge determines that disclosure is necessary for the proper administration of justice and disclosure is not prohibited by other statute or rule.***

CURRENT LAW: Under the current law of evidence, there are a number of statutes that treat information acquired in the course of rendering services as privileged and not generally admissible into evidence at trial. These statutes include G.S. 8-53 (Communications between physician and patient), G.S. 8-53.3 (Communications between psychologist and client or patient), G.S. 8-53.4 (School counselor privilege), G.S. 8-53.5 (Communications between marital and family therapist and client(s)), G.S. 8-53.7 (Social worker privilege), G.S. 8-53.8 (Counselor privilege), and G.S. 8-53.9 (Optometrist/patient privilege). All of these statutes are qualified in that they provide the privilege given to information acquired while rendering services is limited to the extent that a judge may compel disclosure of information if the judge determines that disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule.

BILL ANALYSIS: House Bill 743 amends Chapter 8 of the General Statutes (Evidence) to provide that no person licensed pursuant to Article 9A of Chapter 90 of the General Statutes (Nursing Practice Act) shall be required to disclose information acquired in rendering professional nursing services and necessary to enable the person to render professional nursing services. The Nursing Practice Act governs the licensing of both registered nurses and licensed practical nurses. House Bill 743 also provides that the privilege given to information acquired while rendering professional nursing services is qualified to the extent that the presiding judge may compel disclosure if the judge determines that disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

This summary was substantially contributed to by Jeff Hudson, Counsel to the House Judiciary II Committee.

H743-SMRU-001

§ 8-53. Communications between physician and patient.

No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon, and no such information shall be considered public records under G.S. 132-1. Confidential information obtained in medical records shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or, in the case of unadministered estates, the next of kin. Any resident or presiding judge in the district, either at the trial or prior thereto, or the Industrial Commission pursuant to law may, subject to G.S. 8-53.6, compel disclosure if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1885, c. 159; Rev., s. 1621; C.S., s. 1798; 1969, c. 914; 1977, c. 1118; 1983, c. 410, ss. 1, 2; c. 471.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1114
PROPOSED SENATE COMMITTEE SUBSTITUTE H1114-CSRU-39 [v.2]

6/4/2003 1:56:57 PM

Short Title: School Volunteer Records Are Confidential. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE VOLUNTEER FILES MAINTAINED BY LOCAL BOARDS OF EDUCATION PRIVATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-209.1. Nondisclosure of certain volunteer records.**

(a) All records of a local school administrative unit regarding volunteers, former volunteers, and persons applying to be volunteers are not public records as provided in Chapter 132 of the General Statutes. These records shall be open for inspection only to the following persons:

(1) The volunteer, former volunteer, person who applied to be a volunteer, or that person's properly authorized agent who may examine the person's file in its entirety at any reasonable time;

(2) The superintendent and other supervisory personnel;

(3) The parent or guardian of any student with whom the volunteer has or had contact;

(4) Members of the local board of education and the board's attorney; and

(5) A party, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with that subpoena or court order.

(b) A local board of education may also release or permit the inspection of a volunteer file, except as prohibited by State or federal law, if prior to the release of the information or inspection of the file:

(1) The local board of education determines that the release of the information or inspection of the file is essential (i) to maintaining the integrity of the local board of education or (ii) to maintaining the level or quality of services provided by the local board of education; or

(2) The local board of education finds that there is a substantial showing of the foregoing criteria; and

(3) The local board of education prepares a memorandum setting forth the local board of education's reasons for releasing the records or permitting the inspection of the files. This memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) As used in this section, a volunteer is a person who provides services to a local board of education without expectation of compensation and with the understanding that the local board of education is under no obligation to continue accepting those services or to compensate the volunteer for them.

(d) This section shall not be construed to require a local school administrative unit to maintain records on volunteers, former volunteers, or persons applying to be volunteers."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. ~~HA~~ 1114 DATE 6-5-03

S. B. No. _____ Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE A1114-CSRV-39

Rep.) BERGER

Sen.)

1 moves to amend the bill on page 1, line 22

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "MAY" AND SUBSTITUTING THE WORD

4 "SHALL".

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1114:
School Volunteer Records/ Nondisclosure.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Saunders
Date:	May 29, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1114-CSRU-39		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1114 would make school records regarding volunteers, former volunteers, and persons applying to be volunteers not public records.***

CURRENT LAW: There is a general legal duty of school boards to use reasonable care in selecting, training, and supervising volunteers. Consequently, it is recommended that boards have policies for selecting and using volunteers. For certain volunteer positions, particularly where there will be student contact and limited supervision, it also is recommended that a background check, which may include a criminal records check, be done. Currently, all school board records are public, unless statutorily made confidential. Thus, student and certain personnel records are not public. A volunteer may expect privacy; however, except for a volunteer's criminal history report received from the SBI, a volunteer's record is considered a public record. It is possible that releasing or making public negative information concerning a volunteer would have the potential of becoming the basis of a defamation lawsuit. However, the information would need to be false. Even if the information was false, the board would not be found liable if the person who released the information did so in good faith and while upholding a valid interest (e.g., maintaining a safe school) or pursuing a legal right or duty, and the person who heard the information had a corresponding interest, right, or duty.

BILL ANALYSIS: The bill would add a new G.S. 115C-209.1 to the Community Schools Act. This new section would provide that all school records regarding volunteers are not open to public inspection under the Public Records Act. Volunteers are defined as persons who provide services to the board without expectation of compensation and with the understanding that the board is not obligated to accept the services of pay for them.

The volunteers, superintendent, school supervisory personnel, members of the local board, the school board's attorney, the parent or guardian of any student with whom the volunteer has or had contact, and a party by authorization of a subpoena or court record, would be permitted to inspect the records. The new section also would require the release or inspection of these records when the board determines or finds the release or inspection is essential to maintaining the integrity of the board OR to maintaining the level or quality of services provided by the board AND the board prepares a written memorandum with its reasons for release or inspection. The superintendent must keep the memorandum, which is a public record.

The bill would not require school systems to maintain records related to volunteers.

EFFECTIVE DATE: This bill is effective when it becomes law.

This summary was substantially contributed to by Robin Johnson, Counsel, House Education Committee.

H1114-SMRU-004

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1114

Short Title:	School Volunteer Records Are Confidential.	(Public)
Sponsors:	Representative Saunders.	
Referred to:	Education.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE VOLUNTEER FILES MAINTAINED BY LOCAL BOARDS OF EDUCATION PRIVATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-209.1. Confidentiality of certain volunteer records.**

(a) All records of a local school administrative unit regarding volunteers, former volunteers, and persons applying to be volunteers are confidential and are not public records as provided in Chapter 132 of the General Statutes. These records shall be open for inspection only to the following persons:

(1) The volunteer, former volunteer, person who applied to be a volunteer, or that person's properly authorized agent who may examine the person's file in its entirety at any reasonable time;

(2) The superintendent and other supervisory personnel;

(3) The parent or guardian of any student with whom the volunteer has or had contact;

(4) Members of the local board of education and the board's attorney; and

(5) A party, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with that subpoena or court order.

(b) A local board of education may also release or permit the inspection of a volunteer file if, prior to the release of the information or inspection of the file, the local board of education:

(1) Determines that the release of the information or inspection of the file is essential (i) to maintaining the integrity of the local board of education or (ii) to maintaining the level or quality of services provided by the local board of education; and

(2) Prepares a memorandum setting forth the local board's reasons for releasing the records or permitting the inspection of the files. This memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) As used in this section, a volunteer is a person who provides services to a local board of education without expectation of compensation and with the understanding that the local board of education is under no obligation to continue accepting those services or to compensate the volunteer for them.

(d) This section shall not be construed to require a local school administrative unit to maintain records on volunteers, former volunteers, or persons applying to be volunteers, except where there is evidence of volunteer misconduct."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — 6-5-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Lund	WCSR
MAUDILE GREEN	Charlotte - Mecklenburg Schools
W Polk	NCAGO
SB Walker	Bill Drafting
Jennifer Williston	Bill Drafting
Amy Dobson	NC Statewatch
Jeffrey Covington	Blake Investigations, Raleigh
Christine Covington	Blake Investigations, Inc Raleigh
LaTayaFore	DJJDP - CPSV
Vickye Herring	DJJDP- CPSV
Leanne Bright Clausman	PIA - Pender/New Hanover
Barbara Carsbon	MFS

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

6-5-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Felicia Schneider	NC Assoc. of P.I.'s Greensboro, NC.
John Phelps	NCLM
Katherine Joyce	NCASA
Lorin Mueller	NC Coalition of Police
Bobby Beddle	PFFPN
Tom Ross	NC Assoc of PI Stanly
Jeff Kiker	Kiker Investigations 133 E. Council St. Salisbury NC 28144
MW Safrit	Kiker Investigation 133 E. Council St. Salisbury, NC. 28144
James E. Haupt	"
Kim Westbrook	State Board of Elections
Bob Hall	Democracy North Carolina

VISITOR REGISTRATION SHEET

J-1 Committee — 6-5-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Moore	NC Petroleum Council, Fayetteville St. Mall, Raleigh
Jennifer McKenzie (Private Investigator)	Abacus Research PO Box 10647 Raleigh NC 27605
Judi Miller	NC Assoc of Private Investigators
Bill Fletcher	NCAPI - Vice Pres. Legislative & Legal Affairs 824 New Hope Rd, Purlear NC 28665
John Madler	NC Sentencing Commission
Ken Melton	Alley Associates, Inc.
Cam Cave	BPMHL
Jaime Langwell	NCNP
Jeff Hunt	N.C. Conf. of DAs
Joanne Struwas	NCDA
Howard Kramer	N.C. Bd. of Nursing

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

6-5-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles McDarris	Attorney – Private Protection Services Board
Tony Adams	NC Outdoor Advertising Assoc.,
Porter	Smith Anderson.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 12, 2003	10:00 AM	1027 LB

REVISED NOTICE FOR THURSDAY

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB-394	Clarify Legal Filing Law	Rep. Stam
HB-743	Nurse Testimonial Privilege	Rep. Nesbitt/Walend/Glazier
HB-817	Gun Sale Legal with Concealed Handgun Permit	Rep Hilton
HB-819	Campaigning Outside Polls	Rep. Miller/Ellis
HB-1126	Collaborative Law Procedures/Family Law	Rep. Hackney
HB-1139	Judicial Approval for Pleas	Rep. Ellis
SB-44	Revenue Estimates Limited	Sen. Shubert

Senator Daniel G. Clodfelter, Chair

2003-2004

SENATE
JUDICIARY I

COMMITTEE
MINUTES

JUDICIARY 1 COMMITTEE

June 12, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with ten members present. He introduced Pages, Sara Riggins from Garner, NC, Molly Harden from Windsor, NC and Misty Bradley from Rutherfordton.

HB-394 (Clarify Legal Filing Law) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Representative Paul Stam explained that the bill amends various sections of the General Statutes to clarify the law pertaining to legal deadlines falling on legal holidays. Staff Attorney, Walker Reagan explained the technical sections of the bill. Senator Phillip Berger offered an Amendment to the bill regarding language, and moved for adoption of the Amendment. All members voted yes. See attached Amendment. The Amendment was adopted. Senator Tony Rand moved for a Favorable Report as amended. All members voted yes. Motion carried.

HB-743 (Nurse Testimonial Privilege) was introduced by Senator Clodfelter. Bill sponsor, Representative Martin Nesbitt explained that the bill provides that nurses shall not be required to disclose information acquired while rendering professional nursing services except in cases where the presiding judge determines that disclosure is necessary for the proper administration of justice and disclosure is not prohibited by other statute or rule. Senator's Tony Rand and Wib Gulley had questions. Mr. Walker Reagan, staff attorney, and Senator Clodfelter answered the questions. Senator Rand moved for a Favorable Report. Senator Gulley seconded the motion. All members voted yes. Motion carried.

HB-819 (Campaigning Outside Polls) Committee Substitute was introduced by Senator Clodfelter. Bill co-sponsor, Representative Jim Ellis explained that the bill would require the local board of elections to provide an area for engaging in election related activity that is adjacent to the buffer zone for each voting place. See Bill Summary for further information. Senator's Jeanne Lucas, Tony Rand, Wib Gulley and Vernon Malone had questions. Staff Attorney, Bill Gilkeson and Mr. Gary Bartlett, NC Board of Election answered the questions. Senator Clodfelter stated that the bill would be displaced at this time and heard at a future date.

HB-1126 (Collaborative Law Procedures/Family Law) Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Joe Hackney explained the bill would establish collaborative law procedures in Chapter fifty of the General Statutes whereby parties seeking a divorce and their attorneys may settle their disputes by written agreement with limited judicial intervention. See Bill Summary. Senator's Tony Rand, Phillip Berger and Wib Gulley had questions. Rep. Hackney answered the questions. Senator Clodfelter stated that he would appoint a Subcommittee to work with Rep. Hackney on the language in the bill. Senator Wib Gulley, Chair with Senator's Berger and Rand as members of the Committee. The bill was displaced and will be heard at a future date.

SB-44 (Revenue Estimates Limited) was introduced by Senator Clodfelter for discussion only. He stated that it would not be voted on at this time. Bill sponsor, Senator Fern Shubert explained the bill. See Bill Summary. Senator's Tony Rand and Wib Gulley had questions. Senator Shubert answered the questions. The bill was displaced and will be heard at a future date.

Being no further business the meeting adjourned at 11:00 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, June 23, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **743** Nurse Testimonial Privilege.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, June 18, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **394** Clarify Legal Filing Law.

Draft Number:	PCS 80335
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 394
Committee Substitute Favorable 4/7/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H394-PCS80335-RU-50

Short Title: Clarify Legal Filing Law. (Public)

Sponsors:

Referred to:

March 11, 2003

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE LAW PERTAINING TO LEGAL DEADLINES FALLING ON A HOLIDAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 103-5(a) reads as rewritten:

"(a) ~~Where~~ Except as otherwise provided by law, when the day or the last day for doing ~~an~~ any act required or permitted by law to be ~~done~~ performed in a public office or courthouse falls on ~~Sunday or a holiday~~a Saturday, Sunday, or legal holiday when the public office or courthouse is closed for transactions, the act may be ~~done~~ performed on the next ~~succeeding secular or business~~ day that the public office or courthouse is open for transactions.~~and where the courthouse in any county is closed on Saturday or any other day by order of the board of county commissioners of said county and the day or the last day required for filing an advance bid or the filing of any pleading or written instrument of any kind with any officer having an office in the courthouse, or the performance of any act required or permitted to be done in said courthouse falls on Saturday or other day during which said courthouse is closed as aforesaid, then said Saturday or other day during which said courthouse is closed as aforesaid shall be deemed a holiday; and said advance bid, pleading or other written instrument may be filed, and any act required or permitted to be done in the courthouse may be done on the next day during which the courthouse is open for business.~~"

SECTION 2. G.S. 1A-1, Rule 6(a) reads as rewritten:

"(a) Computation. – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal ~~holiday,~~ holiday when the courthouse is closed for transactions, in which event the

period runs until the end of the next day which is not a Saturday, Sunday, or a legal ~~holiday.~~ holiday when the courthouse is closed for transactions. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday."

SECTION 3. G.S. 45-21.21(e) reads as rewritten:

"(e) A sale may be postponed more than once provided the final postponed sale date is not later than 90 days, exclusive of Sunday and legal ~~holidays,~~ holidays when the courthouse is closed for transactions, after the original date for the sale."

SECTION 4. G.S. 45-21.23 reads as rewritten:

"**§ 45-21.23. Time of sale.**

A sale shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. on any day other than Sunday or a legal ~~holiday.~~holiday when the courthouse is closed for transactions."

SECTION 5. G.S. 45-21.24 reads as rewritten:

"**§ 45-21.24. Continuance of uncompleted sale.**

A sale commenced but not completed within the time allowed by G.S. 45-21.23 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday or a legal ~~holiday.~~ holiday when the courthouse is closed for transactions. In case such continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued."

SECTION 6. G.S. 45-21.27(a) reads as rewritten:

"(a) An upset bid is an advanced, increased, or raised bid whereby any person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of the sale or the last notice of upset bid was filed by the close of normal business hours on the tenth day after the filing of the report of the sale or the last notice of upset bid, and if the tenth day shall fall upon a Sunday or legal ~~holiday,~~ holiday when the courthouse is closed for transactions, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid filed on the day following when said office is open for the regular dispatch of its business. Subject to the provisions of G.S. 45-21.30, there shall be no resales; rather, there may be successive upset bids each of which shall be followed by a period of 10 days for a further upset bid. When an upset bid is not filed following a sale, resale, or

prior upset bid within the time specified, the rights of the parties to the sale or resale become fixed."

SECTION 7. G.S. 1-339.64(a) reads as rewritten:

"(a) An upset bid is an advanced, increased, or raised bid whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid and if the tenth day falls upon a Sunday or legal holiday when the courthouse is closed for transactions, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.66A and G.S. 1-339.69, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.66A, no upset bids may be filed while the motion is pending."

SECTION 8. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased, or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or the last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid, and if the tenth day falls upon a Sunday or legal holiday when the courthouse is closed for transactions, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.27A and G.S. 1-339.30, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely

motion for resale is filed under G.S. 1-339.27A, no upset bids may be filed while the motion is pending."

SECTION 9. G.S. 7B-506(e) reads as rewritten:

"(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal ~~holidays,~~ holidays when the courthouse is closed for transactions, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days."

SECTION 10. G.S. 7B-1906(b) reads as rewritten:

"(b) As long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal ~~holidays,~~ holidays when the courthouse is closed for transactions, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days. In the case of a juvenile alleged to be delinquent, further hearings may be waived only with the consent of the juvenile, through counsel for the juvenile."

SECTION 11. G.S. 105-374(m) reads as rewritten:

"(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal ~~holiday.~~ holiday when the courthouse is closed for transactions. (In actions brought by a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall door.) The commissioner conducting the sale may, in his discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of his bid, which deposit, in the event that the bidder refuses to take title and a resale becomes necessary, shall be applied to pay the costs of sale and any loss resulting. (However, this provision shall not deprive the commissioner of his right to sue for specific performance of the contract.) No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale."

SECTION 12. G.S. 156-105 reads as rewritten:

"**§ 156-105. Assessment lien; collection; sale of land.**

The assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the State and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of 10 o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal ~~holiday,~~ holiday when the courthouse is closed for

transactions, which may be designated by the board of drainage commissioners. After any such sale date has been designated by the board of drainage commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be readvertised and sold on any day which the board of drainage commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other respects, except as herein or otherwise modified or amended, the existing law as to the collection of State and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in any drainage districts due in 1917, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in

default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The 1931 amendment to this section shall have the same force and effect from and after April 13, 1931, as if it had been ratified and enacted prior to the first day of January, 1929, and no sale of drainage lands held under the provisions of section 5361 shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section 5361 of the Consolidated Statutes prior to this amendment."

SECTION 13. This act becomes effective October 1, 2003, and applies to any act required or permitted by law to be done on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 394

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H394-ARU-39 [v.2]

Date 6-12 ,2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Senator BERGER

moves to amend the bill on page 1, lines 6 through 8,
by rewriting the lines to read:

"(a) ~~Where~~ Except as otherwise provided by law, when the day or the last day for doing ~~an~~ any act required or permitted by law to be ~~done~~ performed in a public office or courthouse falls on ~~Sunday or a holiday~~a Saturday, Sunday or legal holiday when the public office or courthouse is closed for transactions,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 394:
Clarify Legal Filing Law.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Stam
Date:	June 12, 2003	**Summary by:**	O. Walker Reagan,
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 394 amends various sections of the General Statutes to clarify the law pertaining to legal deadlines falling on legal holidays.***

CURRENT LAW: Current law (G.S. 103-4, attached) lists 18 separate days as legal public holidays. This list includes several days that are not commonly recognized as holidays, such as March 25 (Greek Independence Day), April 12 (Anniversary of signing of the Halifax Resolves), and May 20 (Anniversary of Mecklenburg Declaration of Independence), times when the courthouses are open for business.

Current law also provides that when the day or the last day for doing an act required or permitted by law falls on a Sunday or legal holiday, the act may be done on the next business day.

G.S. 7A-39 (attached) authorizes the Chief Justice of the Supreme Court to extend legal deadlines for filings at the courthouse when the courthouse has been closed due to a disaster or emergency situation.

BILL ANALYSIS: House Bill 394 bill amends provisions in several sections of the General Statutes, which set deadlines for various acts to be performed. The amendments clarify the law to provide that only legal holidays on which the courthouse is actually closed for transactions will create an extension of time to perform the act.

The laws amended by this bill include provisions relating to:

- **Section 1** – Legal acts subject to deadlines that fall on Sundays or holidays.
- **Section 2** – Computation of time and deadlines under the Rules of Civil Procedure.
- **Sections 3, 4, 5, and 6** – Deadlines in foreclosure actions including dates of sale, postponement of sales, incomplete sales, and upset bid periods.
- **Section 7** – Upset bid deadlines in execution on civil judgment sales.
- **Section 8** – Upset bid deadlines in judicial sales.
- **Sections 9 and 10** – Deadlines for secured custody hearings for juveniles.
- **Section 11** – Dates for sales in tax lien foreclosures sales.
- **Section 12** – Dates for sales in drainage assessment lien matters.

EFFECTIVE DATE: The bill becomes effective October 1, 2003, and applies to any act required or permitted by law to be done on or after that date.

This summary was substantially contributed to by Karen Cochrane-Brown, Counsel to the House Judiciary II Committee.

H394-SMRU-001

§ 103-4. Dates of public holidays.

(a) The following are declared to be legal public holidays:

(1) New Year's Day, January 1.
(1a) Martin Luther King, Jr.'s, Birthday, the third Monday in January.
(2) Robert E. Lee's Birthday, January 19.
(3) Washington's Birthday, the third Monday in February.
(3a) Greek Independence Day, March 25.
(4) Anniversary of signing of Halifax Resolves, April 12.
(5) Confederate Memorial Day, May 10.
(6) Anniversary of Mecklenburg Declaration of Independence, May 20.
(7) Memorial Day, the last Monday in May.
(8) Good Friday.
(9) Independence Day, July 4.
(10) Labor Day, the first Monday in September.
(11) Columbus Day, the second Monday in October.
(11a) Yom Kippur.
(12) Veterans Day, November 11.
(13) Tuesday after the first Monday in November in years in which a general election is to be held.
(14) Thanksgiving Day, the fourth Thursday in November.
(15) Christmas Day, December 25.

(b) Whenever any public holiday shall fall upon Sunday, the Monday following shall be a public holiday.

§ 7A-39. Adverse weather cancellation of court sessions and closing court offices; extension of statutes of limitations in catastrophic conditions.

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other comparable emergency situations, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts.

(b) Authority of Chief Justice to Extend Statutes of Limitations. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order.

(1) Catastrophic conditions defined. – As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the courthouse, including conditions that may result from hurricane, tornado, flood, snowstorm, ice storm, other severe natural disaster, fire, or riot.

(2) Entry of order. – The Chief Justice may enter an order under this subsection at any time after catastrophic conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon being filed in the office of the clerk of superior court of that county.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised. (2000-166, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 394

Short Title:	Clarify Legal Filing Law.	(Public)
Sponsors:	Representatives Stam; and Gorman.	
Referred to:	Judiciary II.	

March 11, 2003

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE LAW PERTAINING TO LEGAL DEADLINES FALLING ON A HOLIDAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 103-5(a) reads as rewritten:

"**§ 103-5. Acts to be done on Sunday or holidays.**

(a) Where the day or the last day for doing ~~an~~ any act required or permitted by law to be ~~done~~ performed in a public office or courthouse falls on ~~Sunday or a holiday~~ a day when the public office or courthouse is closed, the act may be ~~done~~ performed on the next ~~succeeding secular or business~~ day that the public office or courthouse is open.~~and where the courthouse in any county is closed on Saturday or any other day by order of the board of county commissioners of said county and the day or the last day required for filing an advance bid or the filing of any pleading or written instrument of any kind with any officer having an office in the courthouse, or the performance of any act required or permitted to be done in said courthouse falls on Saturday or other day during which said courthouse is closed as aforesaid, then said Saturday or other day during which said courthouse is closed as aforesaid shall be deemed a holiday; and said advance bid, pleading or other written instrument may be filed, and any act required or permitted to be done in the courthouse may be done on the next day during which the courthouse is open for business.~~"

SECTION 2. Article 2A of Chapter 45 is amended by adding a new section to read:

"**§ 45-21.27A. Sales on Sundays and holidays.**

Where the last day for performing any act required under this Article falls on a day when the courthouse is closed, the act may be performed on the next succeeding day when the courthouse is open."

SECTION 3. This act becomes effective October 1, 2003, and applies to any act required or permitted by law to be done on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 743
Second Edition Engrossed 4/21/03

Short Title:	Nurse Testimonial Privilege.	(Public)
Sponsors:	Representatives Nesbitt, Walend (Primary Sponsors); and Glazier.	
Referred to:	Judiciary II.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NURSE TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.13. Nurse privilege.**

No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional nursing services, and which information was necessary to enable that person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 743:
Nurse Testimonial Privilege.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representatives Nesbitt and Walend
Date:	June 5, 2003		
Version:	Second Edition	**Summary by:**	O. Walker Reagan, Committee Co-Counsel

SUMMARY: ***House Bill 743 provides that nurses shall not be required to disclose information acquired while rendering professional nursing services except in cases where the presiding judge determines that disclosure is necessary for the proper administration of justice and disclosure is not prohibited by other statute or rule.***

CURRENT LAW: Under the current law of evidence, there are a number of statutes that treat information acquired in the course of rendering services as privileged and not generally admissible into evidence at trial. These statutes include G.S. 8-53 (Communications between physician and patient), G.S. 8-53.3 (Communications between psychologist and client or patient), G.S. 8-53.4 (School counselor privilege), G.S. 8-53.5 (Communications between marital and family therapist and client(s)), G.S. 8-53.7 (Social worker privilege), G.S. 8-53.8 (Counselor privilege), and G.S. 8-53.9 (Optometrist/patient privilege). All of these statutes are qualified in that they provide the privilege given to information acquired while rendering services is limited to the extent that a judge may compel disclosure of information if the judge determines that disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule.

BILL ANALYSIS: House Bill 743 amends Chapter 8 of the General Statutes (Evidence) to provide that no person licensed pursuant to Article 9A of Chapter 90 of the General Statutes (Nursing Practice Act) shall be required to disclose information acquired in rendering professional nursing services and necessary to enable the person to render professional nursing services. The Nursing Practice Act governs the licensing of both registered nurses and licensed practical nurses. House Bill 743 also provides that the privilege given to information acquired while rendering professional nursing services is qualified to the extent that the presiding judge may compel disclosure if the judge determines that disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

This summary was substantially contributed to by Jeff Hudson, Counsel to the House Judiciary II Committee.

H743-SMRU-001

§ 8-53. Communications between physician and patient.

No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon, and no such information shall be considered public records under G.S. 132-1. Confidential information obtained in medical records shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or, in the case of unadministered estates, the next of kin. Any resident or presiding judge in the district, either at the trial or prior thereto, or the Industrial Commission pursuant to law may, subject to G.S. 8-53.6, compel disclosure if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1885, c. 159; Rev., s. 1621; C.S., s. 1798; 1969, c. 914; 1977, c. 1118; 1983, c. 410, ss. 1, 2; c. 471.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 743

Short Title:	Nurse Testimonial Privilege.	(Public)
Sponsors:	Representatives Nesbitt, Walend (Primary Sponsors); and Glazier.	
Referred to:	Judiciary II.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NURSE TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.13. Nurse privilege.**

No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional nursing services, and which information was necessary to enable that person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

SECTION 2. This act is effective when it becomes law.

PROFESSIONAL PRIVILEGED COMMUNICATION STATUTES

§ 8-53. Communications between physician and patient.

No person, duly authorized to practice physic or surgery, shall be **required to disclose any information** which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon, and no such information shall be considered public records under G.S. 132-1. Confidential information obtained in medical records shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or, in the case of unadministered estates, the next of kin. Any resident or presiding judge in the district, either at the trial or prior thereto, or the Industrial Commission pursuant to law may, subject to G.S. 8-53.6, compel disclosure if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1885, c. 159; Rev., s. 1621; C.S., s. 1798; 1969, c. 914; 1977, c. 1118; 1983, c. 410, ss. 1, 2; c. 471.)

§ 8-53.1. Physician-patient privilege waived in child abuse.

Notwithstanding the provisions of G.S. 8-53, the physician-patient privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina. (1965, c. 472, s. 2; 1971, c. 710, s. 2; 1981, c. 469, s. 24; 1998-202, s. 13(b).)

§ 8-53.2. Communications between clergymen and communicants.

No priest, rabbi, accredited Christian Science practitioner, or a clergyman or ordained minister of an established church shall be **competent to testify** in any action, suit or proceeding concerning any information which was communicated to him and entrusted to him in his professional capacity, and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted, provided, however, that this section shall not apply where communicant in open court waives the privilege conferred. (1959, c. 646; 1963, c. 200; 1967, c. 794.)

§ 8-53.3. Communications between psychologist and client or patient.

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be **required to disclose any information** which he or she may have acquired in the practice of psychology and which information was necessary to enable him or her to practice psychology. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes. (1967, c. 910, s. 18; 1983, c. 410, ss. 3, 7; 1987, c. 323, s. 2; 1993, c. 375, s. 2; c. 553, s. 78; 1998-202, s. 13(c).)

§ 8-53.4. School counselor privilege.

No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be **competent to testify** in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, and which information was necessary to enable him to render counseling services; provided, however, that this section shall not apply where the student in open court waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at the trial or prior thereto, if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be the district court judge, and if the case is in superior court the judge shall be a superior court judge. (1971, c. 943; 1983, c. 410, ss. 4, 5.)

§ 8-53.5. Communications between marital and family therapist and client(s).

No person, duly licensed as a licensed marriage and family therapist, nor any of the person's employees or associates, shall be **required to disclose any information** which the person may have acquired in rendering professional marriage and family therapy services, and which information was necessary to enable the person to render professional marriage and family therapy services. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in the court's opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1979, c. 697, s. 2; 1983, c. 410, ss. 6, 7; 1985, c. 223. s. 1; 2001-487, s. 40(a).)

§ 8-53.7. Social worker privilege.

No person engaged in delivery of private social work services, duly licensed or certified pursuant to Chapter 90B of the General Statutes shall be **required to disclose any information** that he or she may have acquired in rendering professional social services, and which information was necessary to enable him or her to render professional social services: provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by G.S. 8-53.6 or any other statute or regulation. (1983, c. 495, s. 2; 2001-152, s. 2; 2001-487, s. 40(b).)

§ 8-53.8. Counselor privilege.

No person, duly licensed pursuant to Chapter 90, Article 24, of the General Statutes, shall be **required to disclose any information** which he or she may have acquired in rendering professional counseling services, and which information was necessary to enable him or her to render professional counseling services: Provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by other statute or regulation. (1983, c. 755, s. 2; 1993, c. 514, s. 2.)

§ 8-53.9. Optometrist/patient privilege.

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be **required to disclose any information** that may have been acquired in rendering professional optometric services and which information was necessary to enable that person to render professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule. (1997-75, s. 4; 1997-304, 3.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 819

Short Title:	Campaigning Outside Polls.	(Public)
Sponsors:	Representatives Miller, Ellis (Primary Sponsors); Barnhart, Blackwood, Blust, Bowie, Capps, Culp, Frye, Gorman, Gulley, Hilton, Holmes, Howard, Hunter, L. Johnson, Justice, Justus, Kiser, LaRoque, Lewis, Luebke, McGee, McHenry, Michaux, Moore, Munford, Pate, Preston, Ray, Setzer, Sexton, Stam, Walend, Walker, West, K. Williams, C. Wilson, and G. Wilson.	
Referred to:	Election Law and Campaign Finance Reform.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REQUIREMENT THAT THE COUNTY BOARDS OF ELECTIONS MUST PROVIDE BEYOND THE BUFFER ZONE AROUND THE VOTING PLACE A SPACE WHERE CAMPAIGNING AND OTHER ELECTION-RELATED ACTIVITY CAN BE CONDUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-166.4 reads as rewritten:

"**§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.**

No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at less than 25 feet. The county board of elections shall ~~also, where practical,~~ also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.

(2) The distance the buffer zone extends from that door.

(3) Any available information concerning where political activity, including sign placement, ~~that~~ is permitted beyond the buffer zone."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 819:
Campaigning Outside Polls.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representatives Miller and Ellis
Date:	June 10, 2003		
Version:	H819-CSRR-37[v.1]	**Summary by:**	William R. Gilkeson Committee Co-Counsel

SUMMARY: ***This PCS for House Bill 819 would require the local board of elections to provide an area for engaging in election related activity that is adjacent to the buffer zone for each voting place. Effective 1-1-04.***

CURRENT LAW: At polling places, within the voting place or the buffer zone around the voting place, persons are not allowed to do any of the following:

- Hinder access.
- Harass others.
- Distribute campaign literature.
- Place political advertising, solicit votes.
- Otherwise engage in election-related activity. *G.S. 163-166.4*

In setting the buffer zone for each voting place, the county board of elections must set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed. To take into account varying building and lot designs, the buffer zone may be less that 50 feet if necessary, but in no event may it be less than 25 feet. *163-166.4*

The county board of elections is also required, **where practical,** to provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. *163-166.4*

A county board of elections may "demand and use" a tax-supported or tax-maintained building as a voting place. But the board has no such right to use a private building such as a church. *163-129, see copied on other side.* However, churches and other private buildings sometimes agree to be voting places.

As to where a voting place for a precinct can be, the basic statutory rule is that it must be "within the precinct or on a tract or lot adjoining the precinct." *163-129.* However, with a unanimous vote and with the approval of the State Election Director, a county board of elections may designate a building outside the precinct as its voting place. *163-130.1, see copied on other side.*

BILL ANALYSIS: The bill would **require** the local board of elections to provide an area adjacent to the buffer zone at each polling place for the purposes of election-related activities prohibited in the buffer zone, rather than provide such an area where practical.

The original bill had an immediate effective date. This PCS changes the effective date to January 1, 2004.

The original version of this summary was written by Erika Churchill.

§ 163-129. Structure at voting place; marking off limits of voting place.

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections may require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17; 1967, c. 775, s. 1; 1973, c. 793, s. 54; 1983, c. 411, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 34; 1999-426, s. 5(a).)

§ 163-130.1. Out-of-precinct voting places.

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Director. Approval by the Executive Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;
(2) Adequate notification and publicity are provided to notify voters in the precinct of the new polling location;
(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation;
(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters; and
(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Director annually to determine whether it is still the only available alternative for that precinct. (1999-426, s. 3(a); 2001-319, ss. 3(a), 11.)

LAST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1126
Committee Substitute Favorable 4/23/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H1126-CSRU-44 [v.4]

6/9/2003 10:38:35 PM

Short Title: Collaborative Law Procedures/Family Law. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Collaborative Law Proceedings.

"**§ 50-70. Collaborative law.**

As an alternative to judicial disposition of issues arising in a civil action under this Chapter, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedures as set forth in this Article.

"**§ 50-71. Definitions.**

As used in this article, the following terms mean:

(1) Collaborative law. – A procedure in which a husband and wife who are separated and are seeking a divorce, or are contemplating separation and divorce, and their attorneys agree to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate, and where the parties' attorneys agree not to serve as litigation counsel, except to ask the court to approve the settlement agreement.

(2) Collaborative law agreement. – A written agreement, signed by a husband and wife and their attorneys, that contains an acknowledgement by the parties to attempt to resolve the disputes arising from their marriage in accordance with collaborative law procedures.

(2) Collaborative law procedures. – The process for attempting to resolve disputes arising from a marriage as set forth in this Article.

(3) Collaborative law settlement agreement. – An agreement entered into between a husband and wife as a result of collaborative law procedures that resolves the disputes arising from the marriage of the husband and wife.

(4) Third-party expert. – A person, other than the parties to a collaborative law agreement, hired pursuant to a collaborative law agreement to assist the parties in the resolution of their disputes.

"**§ 50-72. Agreement requirements.**

A collaborative law agreement must be in writing, signed by all the parties to the agreement and their attorneys, and must include provisions for the withdrawal of all attorneys involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute."

"**§ 50-73. Tolling of time periods.**

A validly executed collaborative law agreement shall toll all legal time periods applicable to legal rights and issues under law between the parties for the amount of time the collaborative law agreement remains in effect. This section applies to any applicable statues of limitations, filing deadlines, or other time limitations imposed by law or court rule, including setting a hearing or trial in the case, imposing discovery deadlines, and requiring compliance with scheduling orders.

"**§ 50-74. Notice of collaborative law agreement.**

(a) No notice shall be given to the court of any collaborative law agreement entered into prior to the filing a civil action under this Chapter, except as evidence of the tolling of time periods as set forth in G.S. 50-73.

(b) If a civil action is pending, a notice of a collaborative law agreement, signed by the parties and their attorneys, shall be filed with the court. After the filing of a notice of a collaborative law agreement, the court shall take no action in the case, including dismissal, unless the court is notified in writing that the parties have done one of the following:

(1) Failed to reach a collaborative law settlement agreement.

(2) Both voluntarily dismissed the action.

(3) Asked the court to enter a judgment or order to make the collaborative law settlement agreement an act of the court in accordance with G.S. 50-75.

"**§ 50-75. Judgment on collaborative law settlement agreement.**

A party is entitled to an entry of judgment or order to effectuate the terms of a collaborative law settlement agreement if the agreement is signed by each party to the agreement.

"**§ 50-76. Failure to reach settlement; disposition by court; duty of attorney to withdraw.**

(a) If the parties fail to reach a settlement and no civil action has been filed, either party may file a civil action, unless the collaborative law agreements first provides for the use of arbitration or alternative dispute resolution.

(b) If a civil action is pending and the collaborative law procedures do not result in a collaborative law settlement agreement, upon notice to the court, the court may do either of the following:

(1) Set the civil action for trial on the regular docket.

(2) Dismiss the civil action without prejudice.

(c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this section, the attorneys representing the parties in the collaborative law proceedings may not represent either party in any further civil proceedings and shall withdraw as attorney for either party.

"**§ 50-77. Privileged and inadmissible evidence.**

(a) All statements, communications, evidence and work product made or arising from a collaborative law procedure are confidential and are inadmissible into evidence in any court proceeding. Work product includes any written or verbal communications or analysis of any third party experts used in the collaborative law procedure.

(b) All communications and work product of any attorney or third party expert hired for purposes of participating in a collaborative law procedure shall be privileged and inadmissible into evidence in any court proceeding.

"**§ 50-78. Alternate dispute resolution permitted.**

Nothing in this Article shall be construed to prohibit the parties from using, by mutual agreement, other forms of alternate dispute resolution, including mediation or binding arbitration, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' attorneys for the collaborative law proceeding may also serve as counsel for any form of alternate dispute resolution pursued as part of the collaborative law agreement."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 1126:
Collaborative Law Procedure/Family Law.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Hackney
Date:	June 10, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1126-CSRU-44		

*SUMMARY: **The Proposed Senate Committee Substitute for House Bill 1126 would establish collaborative law procedures in Chapter 50 of the General Statutes whereby parties seeking a divorce and their attorneys may settle their disputes by written agreement with limited judicial intervention.***

CURRENT LAW: Husbands and wives can resolve marital disputes (divorce, alimony, child custody, child support, property division) by separation agreements, consent orders or by trial. Other than settlement offers made in settlement negotiation, all statements and evidence between the parties is generally admissible. There is currently no requirement that an attorney who attempts to negotiate an unsuccessful settlement agreement must withdraw from representing the party in the ultimate court action.

BILL ANALYSIS: **Section 1** of the Proposed Senate Committee Substitute for House Bill 1126 would create a new Article 4 in Chapter 50 of the General Statutes. Chapter 50 covers divorce. alimony and child support generally.

G.S. 50-70 would authorize the use of collaborative law proceedings to settle issues arising from the dissolution of a marital relationship.

G.S. 50-71 defines varies terms. "Collaborative law" is defined as a procedure in which parties who are separated and are seeking a divorce, or who are contemplating separation and divorce, and their counsel agree, in writing, to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The definition also requires that the attorneys of the parties agree not to serve a counsel to the parties if the settlement discussions are unsuccessful and the matter has to be resolved in court.

G.S. 50-72 provides that a collaborative law agreement must be in writing, signed by all parties and their attorneys, and includes provisions for the withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.

G.S. 50-73 provides that once a valid collaborative law agreement is entered into, all legal time periods will be suspended for the amount of time the agreement is in effect.

G.S. 50-74 provides that no notice of a collaborative law agreement need be given to the court prior to the filing of a civil action, but after a civil action is filed, the court is to be notified and the court must suspend action in the case until the matter is settled or the collaborative process is terminated.

G.S. 50-75 provides that a party is entitled to judgment on the agreement if each party to the agreement signs the agreement.

G.S. 50-76 allows the parties to file a civil action if they fail to reach a settlement. If the parties agreed to use arbitration or alternative dispute resolution, these procedures must be utilized first. If a civil

action is already pending and no settlement is reached, upon notice to the court by the parties of their failure to reach a settlement, the court may either set the civil action for trial or dismiss the case without prejudice. Subsection (c) of this section requires the attorneys representing the parties in the collaborative law proceedings to withdraw as counsel for the parties if a civil action is set for trial.

G.S. 50-77 provides that all communications, evidence and other work product of the parties, the attorneys and the third-party experts utilized in the collaborative law procedure are confidential and inadmissible into evidence in any court proceeding.

G.S. 50-78 provides that nothing in this law prohibits the parties from agreeing to participate in alternative dispute resolution, including mediation and arbitration, and makes it clear that the collaborative law agreement attorneys may participate in this alternative dispute resolution.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

This summary was substantially contributed to by Susan Sitze, Counsel to the House Judiciary I Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 44

Short Title:	Revenue Estimates Limited.	(Public)
Sponsors:	Senators Shubert; Allran, Apodaca, Ballantine, Berger, Bingham, Blake, Brock, Carpenter, Carrington, Forrester, Foxx, Garwood, Hartsell, Horton, Pittenger, Rucho, Sloan, Smith, Stevens, Tillman, and Webster.	
Referred to:	Judiciary I.	

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE THAT IN ADOPTING A BUDGET, THE GENERAL ASSEMBLY MAY NOT USE REVENUE ESTIMATES HIGHER THAN THE AMOUNT COLLECTED IN THE PRIOR CALENDAR YEAR, EXCEPT WITH A TWO-THIRDS VOTE OF EACH HOUSE, AND PROVIDING THAT EXCESS COLLECTIONS SHALL BE PLACED IN A RESERVE FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5(3) of Article III of the North Carolina Constitution reads as rewritten:

"(3) Budget. The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

In enacting a budget, the estimated revenue may not exceed the total collections in the previous calendar year, except that the General Assembly by two-thirds vote of all the members of each house may appropriate a higher amount from reserves. If the revenue for the fiscal year exceeds the estimate, the excess shall be deposited in a reserve in the State treasury, to be expended as provided by law.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State

Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the next statewide general election, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment limiting General Assembly in estimating revenue in the budget to the amount collected in the prior calendar year, and providing that excess receipts shall be placed in a reserve fund."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State whereupon the amendment shall become effective. The constitutional amendment shall apply beginning with budgets enacted by the Regular Session of the General Assembly in 2005.

SECTION 4. This act is effective when it becomes law.

SB-44

Legislative Budget Briefing

Executive Budget Act

Fiscal Research Division
NC General Assembly
March 2003

Useful Sections of North Carolina Budget Law

I. Notes on Chronology:

Pre 1900 – Individual appropriations bills are enacted for each department in no particular order. New revenue measures are enacted each biennium. No centralized budgetary controls exist in the Executive Branch.

1905 – The Revisal of 1905 requires the State Treasurer to estimate the expenses of state government for the upcoming biennium and to prepare a revenue bill to meet those expenses. Major state agencies are required to prepare appropriation bills to provide funding for their departments.

1917 – The General Assembly enacts legislation creating a Board of Accounting headed by the Governor. Its purpose is to standardize accounting procedures. The new law also gives the Governor authority to investigate state agency operations to assure that funds are properly spent. This is the first overture toward centralized financial management.

1919 – A five-member Budget Commission, composed of the Governor and chairs of Appropriations and Finance in each house, is established. The Commission is authorized to survey departments and collect financial information. The State Auditor is obligated to furnish columnar statements showing rates of expenditure, credit balances, and similar information for each department. The Commission is to prepare a budget and present it to the General Assembly. Appropriations committees are required to meet jointly in public hearing within five days after the budget is submitted. The General Assembly can increase or decrease items in the submitted budget but can consider no further appropriations until the bill submitted by the Budget Commission is acted on.

1920 – Legislation of 1919 essentially neutralized by amendments.

1925 – Chapter 89 of the 1925 Session Laws, (Executive Budget Act), makes the Governor ex officio Director of the Budget, establishes the Advisory Budget Commission, creates the Budget Bureau, and requires the Governor to submit both a Budget Appropriation Bill and a Budget Revenue Bill. It incorporates most of the substance contained in the Act of 1919 and adds a procedure for allotments. This is part of an effort by Governor Angus McLean to restore the state's credibility with New England Banks.

1929 – Chapter 100 of the 1929 Session Laws re-enacts and clarifies the scope the Executive Budget Act while strengthening the role of the Budget Bureau, which is made a part of the Office of the Governor. This legislation is frequently cited as the origin of the modern executive budget process in North Carolina.

Post 1929 – Since 1929 the Executive Budget Act is amended in all but a few legislative sessions. During the seventies and eighties the general course of development is the assertion of specific legislative controls designed to hold in check the authority of the Governor in a growing and increasingly complex administrative environment.

1939 – The General Assembly discontinues the practice of enacting new revenue laws each session and resorts instead to a permanent Revenue Act.

1969 – The General Assembly proposes a comprehensive revision of the constitution that explicitly assigns to the Governor responsibility for preparing and submitting a comprehensive budget. It further proposes a constitutional amendment limiting the number of state departments to twenty-five and giving the Governor power to reorganize those departments. Both amendments are approved by a vote of the people.

1982 – In Wallace v. Bone, the Supreme Court resolves an important separation of powers issue by declaring the seating of legislators on the Environmental Management Commission unconstitutional. This decision undermines a historic mechanism used to insert legislative influence and control into the executive arena. Just over a month after Wallace v. Bone, the court holds in Advisory Opinion in re Separation of Powers (1982) that the approval of budget transfers by the Joint Legislative Commission on Governmental Operations and the approval of block grants by the Joint Legislative Committee to Review Federal Block Grant Funds are both unconstitutional practices.

1983 – The General Assembly passes the Separation of Powers Act of 1983 that, among other things, strips the Advisory Budget Commission of its powers to approve or disapprove fiscal actions and relegates it to a purely consultative status.

II. The North Carolina Constitution:

Sec. 5. Duties of Governor.

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

Note: The shaded language above was proposed in 1969 as part of a comprehensive rewording of the constitution. The revision took effect in 1971.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

Note: The shaded language immediately above was proposed by the General Assembly in 1977, apparently because of concern that the Constitution did not previously require a balanced budget. The statutory precedent to this subsection is located in G.S. 143-25.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Note: The shaded language above was proposed by the General Assembly in 1969 and became effective in 1970. It was followed with statutory Executive Organization Acts in 1971 and 1973.

(11) *Reconvened sessions.* The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) *Sine die.* If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term.

(1969, c. 932, s. 1; 1977, c. 690, s. 1; 1995, c. 5, s. 2.)

Sec. 3. Limitations upon the increase of State debt.

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforeseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections, or to repel invasions;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

Note: "Two-thirds bonds" is a mechanism used frequently in the past, but is an option not currently available because GO debt is growing rather than diminishing. Note other conditions under which the General Assembly can authorize borrowing without a vote of the people, including, in particular, an unforeseen revenue shortfall.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assembly of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

(1969, c. 1200, s. 1.)

Section 7. Drawing public money.

(1) *State treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

Note: Subsection 1 dates to the Constitution of 1868, arguably among the most important parts of the Constitution. It "...states in language no man can misunderstand that the legislative power is supreme over the public purse." State v. Davis (1967).

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

(1969, c. 1200, s. 1.)

III. North Carolina General Statutes – Executive Budget Act

§ 143-1. Scope and definitions.

§ 143-2. Purposes.

§ 143-3.5. Coordination of statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

§ 143-11. Survey of departments.

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill.

§ 143-15.1. Current Operations Appropriations Act; General Fund Financial Model.

§ 143-15.2. Use of General Fund credit balance; priority uses.

§ 143-15.3. Use of General Fund credit balance; priority uses.

§ 143-15.3A. Repairs and Renovations Reserve Account.

§ 143-15.4. General Fund operating budget size limited.

§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

§ 143-23. All maintenance funds for itemized purposes; transfers between objects or line items.

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.

§ 143-1. Scope and definitions.

This Article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Office of State Budget and Management and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws.

(1925, c. 89, s. 1; 1929, c. 100, s. 1; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

Note: This language is changed little from the statute passed in 1925 and re-enacted in 1929. The scope of the Executive Budget Act is defined by reference to "state funds."

§ 143-2. Purposes.

It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this Article is to include within the powers of the Office of State Budget and Management all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Office of State Budget and Management in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State

of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

(1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; 1983 (Reg. Sess., 1984), c. 1109, s. 10; 1985, c. 290, s. 1; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

Note: The strong language in the first sentence dates to 1925, as does the creation of a central budget office. The same 1925 law made the Governor ex officio Director of the Budget, an assignment that may be unique among the states. The last paragraph defines again the broad scope of the Governor's authority over state agencies.

§ 143-3.5. Coordination of statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

(a) It shall be the duty of the Director, through the Office of State Budget and Management to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The Director shall:

(1) Prepare and release the official demographic and economic estimates and projections for the State;

(2) Conduct special economic and demographic analyses and studies to support statewide budgeting;

(3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;

(4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation;

(5) Develop and maintain in cooperation with other State and local governmental agencies, an information system providing comparative data on resources and expenditures of local governments; and

(6) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years.

Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect. To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual

arrangements, State agencies must submit to the Director proposed procedures and funding requirements.

(b) Any bill proposed by an executive or judicial department, agency, institution, board, or commission that affects the State budget shall be accompanied by a fiscal analysis. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect.

Note: The shaded language above requires five-year fiscal analysis by executive agencies. The requirement was first applied to the Office of State Budget and Management in the 1991 Session as a component of the Budget Reform package.

(c) This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission, or any other committee or commission in the legislative branch.

(1979, 2nd Sess., c. 1137, s. 41; 1991, c. 689, s. 341; 1993 (Reg. Sess., 1994), c. 769, s. 11.1(b); 2000-140, s. 93.1(f); 2001-424, s. 12.2(b).)

§ 143-11. Survey of departments.

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;

(2) The certified budget for the preceding fiscal year;

(3) The currently authorized budget for the preceding fiscal year;

(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and

(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements.

Note: The shaded language is significant because it imposes specific format requirements on the Governor's recommended budget.

(b) The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) State Controller reports including:

a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

b. A statement of special funds.

(2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two fiscal years.

(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

(4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.

(5) A proposal for expenditure of the funds in the Repairs and Renovations Reserve Account, which is established in G.S. 143-15.3A. The Director shall consider the data from the Facilities Condition and Assessment Program in the Office of State Construction when establishing priorities for the proposed expenditure of these funds.

(6) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.

(7) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

(8) An estimate of the equipment replacement costs within the Judicial Department for the period covered by that budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.

(1925, c. 89, s. 12; 1929, c. 100, s. 11; 1983, c. 717, s. 54; 1985 (Reg. Sess., 1986), c. 955, s. 62; c. 1024, ss. 11-13; 1989, c. 752, s. 49; 1991, c. 542, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 81(b); 1993, c. 321, s. 17.1(d); 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d); 1995, c. 324, s. 10(a); 2000-67, s. 15.7.)

Note: The core language of this important section has remained unchanged since 1925 despite the fact that the role of the Advisory Budget Commission has since been much diminished.

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill.

The appropriations committees of the House of Representatives and the Senate and subcommittees thereof shall sit jointly in open sessions while considering the budget and such consideration shall embrace the entire budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, board, commission, and agency of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or subcommittees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or subcommittees thereof. The said joint committee or any subcommittee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. Insofar as

this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a change has been made by an express rule of such branch thereof.

(1925, c. 89, s. 15; 1929, c. 100, s. 16; 1953, c. 501; 1955, c. 5.)

Note: The language of this section is virtually identical to that included in the 1925 law. In recent years, the format for appropriations discussion has differed significantly from that described here.

§ 143-15.1. Current Operations Appropriations Act; General Fund Financial Model.

(a) The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. The Current Operations Appropriations Act shall state the amount of General Fund appropriations availability upon which the General Fund budget is based. The statement of availability shall list separately the beginning General Fund credit balance, General Fund revenues, and any other components of the availability amount.

The General Fund operating budget appropriations, including appropriations for local tax reimbursements and local tax sharing, for the second year in a Current Operations Appropriations Act that contains a biennial budget shall not be more than two percent (2%) greater than the General Fund operating budget appropriations for the first year of the biennial budget.

(b) The General Assembly shall review the results of the General Fund Financial model, a computer-based financial model used to project long-term expenditure and revenue trends under various simulations, in its budget deliberations. The model shall be maintained and, from time to time, updated by the Fiscal Research Division of the General Assembly.

(1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 993, s. 11; 1993 (Reg. Sess., 1994), c. 769, s. 11.3.)

Note: Subsection (a) was enacted in 1991 as a part of Budget Reform. Subsection (b) was added in 1994. The 2% limitation was presumably intended to delay spending commitments until reliable revenue forecasts could be secured.

§ 143-15.2. Use of General Fund credit balance; priority uses.

(a) As used in G.S. 143-15.3, 143-15.3A, and 143-15.3B, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the State Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A.

(b) The State Controller shall transfer funds from the unreserved credit balance to the Savings Reserve Account in accordance with G.S. 143-15.3(a).

(c) The State Controller shall transfer funds from the unreserved credit balance to the Repairs and Renovation Reserve Account in accordance with G.S. 143-15.3A(a).

(d) Repealed by Session Laws 2000, ch. 67, s. 7.7(e), effective June 30, 2001.

(e) The General Assembly may appropriate that part of the anticipated General Fund credit balance not expected to be reserved only for capital improvements or other one-time expenditures.

(1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(a), (c); c. 993, s. 12; 1993, c. 321, s. 17.1(a); 1993 (Reg. Sess., 1994), c. 591, s. 5(a); 1995, c. 324, s. 5.2(a); 1996, 2nd Ex. Sess., c. 18, s. 7.1(a); 1997-443, s. 7.9(b); 2000-67, s. 7.7(e).)

§ 143-15.3. Use of General Fund credit balance; priority uses.

(a) There is established a Savings Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds, that were directly appropriated. In the event that the one-fourth exceeds the amount necessary to reach the five percent (5%) level, only funds necessary to reach that level shall be reserved. If there are insufficient funds in the unreserved credit balance for the Savings Reserve Account and the Repairs and Renovations Reserve Account, then the requirements of this section shall be complied with first, and any remaining funds shall be reserved to the Repairs and Renovations Reserve Account, in accordance with G.S. 143-15.3A.

(a1) If the balance in the Savings Reserve Account falls below the five percent (5%) level during a fiscal year, the State Controller shall, in accordance with subsection (a) of this section, reserve to the Savings Reserve Account for the following fiscal years up to one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account again equals the five percent (5%) level set out in subsection (a) of this section.

(b) The Director may not use funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly.

(1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(b), (c); c. 900, s. 11; c. 993, s. 13; 1993, c. 321, ss. 17.1(c), 21.2; 1993 (Reg. Sess., 1994), c. 591, s. 5(b); c. 769, s. 7.27(b); 1997-443, s. 7.9(c); 2000-67, s. 7.7(f).)

Note: This language was adopted in the 1991 Session as an element of Budget Reform.

§ 143-15.3A. Repairs and Renovations Reserve Account.

(a) There is established a Repairs and Renovations Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year.

(b) The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

(1) Roof repairs and replacements;

(2) Structural repairs;

(3) Repairs and renovations to meet federal and State standards;

(4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;

(5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., as amended;

(6) Improvements to meet fire safety needs;

(7) Improvements to existing facilities for energy efficiency;

(8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;

(9) Improvements and renovations to improve use of existing space;

(10) Historical restoration;

(11) Improvements to roads, walks, drives, utilities infrastructure; and

(12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the footprint of an existing facility unless required in order to comply with federal or State codes or standards.

The Director of the Budget shall not use funds in the Repairs and Renovations Reserve Account unless the use has been approved by an act of the General Assembly or, if the General Assembly is not in session, the Director of the Budget has first consulted with the Joint Legislative Commission on Governmental Operations under G.S. 143-15.3A(c).

(c) The Governor shall consult with the Joint Legislative Commission on Governmental Operations before making allocations from the Repairs and Renovations Reserve Account.

Notwithstanding this subsection, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action under this subsection without consulting the Commission if the

action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this paragraph no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(1993, c. 321, s. 17.1(b); c. 561, s. 16; 1993 (Reg. Sess., 1994), c. 591, s. 5(c); 1995, c. 324, s. 5.2(b); 1996, 2nd Ex. Sess., c. 18, ss. 7.1(b), 7.4(b), (d); 1997-443, s. 7.9(d).)

Note: The Repairs and Renovations Reserve Account was established in the 1993 Session. The initial target fund level was 1.5% of the value of state buildings supported from the General Fund. Later the target was raised to 3.0%.

§ 143-15.4. General Fund operating budget size limited.

(a) Size Limitation. Except as otherwise provided in this section, the General Fund operating budget each fiscal year shall not be greater than seven percent (7%) of the projected total State personal income for that fiscal year. For the purpose of this section, the General Fund operating budget includes any appropriations for local tax-sharing, but does not include appropriations for (i) capital expenditures or (ii) one-time expenditures due to natural disasters, federal mandates, or other emergencies.

(b) Increase in Size Limitation. To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment.

(c) Fiscal Reports. The Office of State Budget and Management and the Fiscal Research Division of the General Assembly shall each submit a tentative estimate of total State personal income for the upcoming fiscal year to the General Assembly no later than February 1 of each year. The Office and the Fiscal Research Division shall each submit a final projection of total State personal income for the upcoming fiscal year to the General Assembly no later than May 1 of each year. The General Assembly shall use the lower of the two final projections to calculate the limitation on the size of the General Fund operating budget provided in this section.

(1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 993, s. 14; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

Note: This section, a version of "taxpayer protection", was included in the 1991 Budget Reform package. Since that time, however, the 7% threshold has been significantly higher than actual spending so that it has not been a source of fiscal restraint.

§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, funds allocated from the Repair and Renovations Account in accordance with G.S. 143-15.3A, and funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143-12(b), may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period, provided, however, that in the event the Director of the Budget declares that it is necessary to deviate from this provision, he may do so after prior consultation with the Joint Legislative Commission on Governmental Operations. For the purpose of this section, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill, amendment, or petition and when any committee of the Senate or the House of Representatives deliberates on that purpose.

Note: This section is often referred to as the "Watkins Amendment." Its original content has been substantially weakened.

(1985 (Reg. Sess., 1986), c. 1014, s. 177; 1987 (Reg. Sess., 1988), c. 1086, s. 50; 1989, c. 752, s. 47; 1991 (Reg. Sess., 1992), c. 812, s. 6(b); 1996, 2nd Ex. Sess., c. 18, s. 7.4(j); 1997-443, s. 7.8(a).)

§ 143-23. All maintenance funds for itemized purposes; transfers between objects or line items.

(a) All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the (i) purposes or programs and (ii) objects or line items enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, as amended by the General Assembly. The function of the Advisory Budget Commission under this subsection applies only if the Director of the Budget consults with the Commission in preparation of the budget.

(a1) Notwithstanding the provisions of subsection (a) of this section, a department, institution, or other spending agency may, with approval of the Director of the Budget, spend more than was appropriated for:

(1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was appropriated from all sources for the purpose or program for the fiscal period;

(2) A purpose or program, without consultation with the Joint Legislative Commission on Governmental Operations, if the overexpenditure of the purpose or program is:

a. Required by a court, Industrial Commission, or administrative hearing officer's order;

b. Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

c. Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on any overexpenditures under this subdivision; or

(3) A purpose or program, after consultation with the Joint Legislative Commission on Governmental Operations in accordance with G.S. 120-76(8), and only if: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted and (ii) the scope of the purpose or program is not increased. The consultation is required as follows:

Note: This section originated in the 1985 Current Operations Bill as a response to Advisory Opinion in re Separation of Powers (1985), wherein the Supreme Court declared that the Joint Legislative Commission on Governmental Operations could not legally be empowered to review budget transfers.

a. For a purpose or program with a certified budget of up to five million dollars ($5,000,000), consultation is required when the authorization for the overexpenditure exceeds ten percent (10%) of the certified budget;

b. For a purpose or program with a certified budget of from five million dollars ($5,000,000) up to twenty million dollars ($20,000,000), consultation is required when the authorization for the overexpenditure exceeds five hundred thousand dollars ($500,000) or seven and one-half percent (7.5%) of the certified budget, whichever is greater;

c. For a purpose or program with a certified budget of twenty million dollars ($20,000,000) or more, consultation is required when the authorization for the overexpenditure exceeds one million five hundred thousand dollars ($1,500,000) or five percent (5%) of the certified budget, whichever is greater;

d. For a purpose or program supported by federal funds or when expenditures are required for the reasons set out in subdivision (2) of this subsection, no consultation is required.

If the Joint Legislative Commission on Governmental Operations does not meet for more than 30 days, the Director of the Budget may satisfy the requirements of the subsection to report to or consult with the Commission by reporting to or consulting with a joint meeting of the Chairs of the Appropriations Committees of the Senate and the House of Representatives.

(a2) Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for:

(1) Salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, moving expenses of employees, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments;

(2) Contracted personal services if (i) the contract is for temporary services or special project services, (ii) the term of the contract does not extend beyond the fiscal year, (iii) the contract

does not impose obligations on the State after the end of the fiscal year; and (iv) the total of all overexpenditures for contracted personal services approved in a program for a fiscal year does not exceed the greater of five hundred thousand dollars ($500,000) or ten percent (10%) of the lapsed salary funds in the program for the fiscal year; and

(3) Uses for which overexpenditures are permitted by subdivision (2) of subsection (a1) of this section but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations.

Lapsed salary funds shall not be used for new permanent employee positions or to raise the salary of existing employees.

Note: The shaded language puts important limits on the use of lapsed salary accumulations.

(a3), (a4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.4(f).

(b) Repealed by Session Laws 1985, c. 290, s. 8.

(c) Transfers or changes as between objects or line items in the budget of the Senate may be made by the President Pro Tempore of the Senate.

(d) Transfers or changes as between objects or line items in the budget of the House of Representatives may be made by the Speaker of the House of Representatives.

(e) Transfers or changes as between objects or line items in the budget of the General Assembly other than of the Senate and House of Representatives may be made jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(e1) Transfers or changes as between objects or line items in the budget of the Office of the Governor may be made by the Governor.

(e2) Transfers or changes as between objects or line items in the Office of the Lieutenant Governor may be made by the Lieutenant Governor.

(f) As used in this section:

(1) "Object or line item" means a budgeted expenditure or receipt in the budget enacted by the General Assembly that is designated by (i) a thirteen-digit code in the 1000-object code series or (ii) an eleven-digit code in all other object code series, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller.

(2) "Purpose or program" means a group of objects or line items for support of a specific activity outlined in the budget adopted by the General Assembly that is designated by a nine-digit fund code in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller.

(1929, c. 100, s. 24; 1981, c. 1127, s. 82; 1985, c. 290, s. 8; c. 479, s. 159; c. 757, s. 183; 1985 (Reg. Sess., 1986), c. 955, s. 72; 1989, c. 752, s. 44; 1991 (Reg. Sess., 1992), c. 812, s.

6(c); c. 900, s. 9(a); 1994, Ex. Sess., c. 24, s. 9(a)-(c); 1993 (Reg. Sess., 1994), c. 769, s. 13; 1995, c. 507, s. 6.3; c. 509, ss. 77, 78; 1996, 2nd Ex. Sess., c. 18, s. 7.4(f); 1997-443, s. 7.8(c).)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. Except as provided in subsection (b) of this section, the Director of the Budget is given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

Note: This concept was made part of the Executive Budget Act in 1929 and serves as a precedent for the constitutional amendment adopted in 1977 relating to a balanced budget.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution,

the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue.

(1929, c. 100, s. 26; 1955, c. 578, s. 7; 1973, c. 476, s. 193; 1981, c. 859, s. 47.1; 1983, c. 717, s. 58; 1985, c. 290, s. 5; 1985 (Reg. Sess., 1986), c. 955, ss. 73, 74; 1996, 2nd Ex. Sess., c. 18, s. 7.4(g); 2002-120, s. 7.)

III. North Carolina Session Law – S.L. 2001—424 (Appropriations Bill)

PART VI. GENERAL PROVISIONS

Requested by: Senators Plyler, Odom, Lee; Representatives Easterling, Oldham, Redwine, Thompson

SPECIAL FUNDS, FEDERAL FUNDS, DEPARTMENTAL RECEIPTS, AND CASH BALANCES/AUTHORIZATION FOR EXPENDITURES

SECTION 6.1.(a) There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to carry on authorized activities included under each department's operations. All these cash balances, federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute, and shall be expended at the level of service authorized by the General Assembly. If the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, then the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from the Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund.

Note: This excerpt is from the 2001 Appropriation Act (S.L. 2001-424). A similar blanket authorization has been included in appropriation acts in recent years and must be read together with the Executive Budget Act to understand current budget administration practices.

13000 ..ce of the Governor

NUMBER OF POSITIONS:

Description	1993-94 Actual	1994-95 Authorized	1995-96 Inc/Dec From Authorized	1995-96 Total Recommended	1996-97 Inc/Dec From Authorized	1996-97 Total Recommended
REQUIREMENTS						
1110 ADMINISTRATION	40.240	40.240	.000	40.240	.000	40.240
1130 INTERGOVTAL RELATIONS	8.000	10.500	.000	10.500	.000	10.500
1140 OMBUDSMAN	1.300	1.300	.000	1.300	.000	1.300
1210 CITIZENS' AFFAIRS	7.800	8.350	.000	8.350	.000	8.350
1230 EDUCATION	14.910	14.910	.000	14.910	.000	14.910
1631 RALEIGH EXEC RESIDENCE	5.000	5.000	.000	5.000	.000	5.000
TOTAL REQUIREMENTS	77.250	80.300	.000	80.300	.000	80.300

1110 Administration

PURPOSE: The Administration Program provides resources and support to enable the Governor to fulfill the duties of Chief Executive of the state as set forth by law. These duties include supervising the official conduct of executive offices, making appointments for vacancies of executive offices and memberships on all boards and commissions authorized by the General Statutes, and serving as Director of the Budget with final authority over state expenditures. Further, the Governor is charged with employing counsel for cases in which the state is interested, granting pardons and commutations, issuing warrants in extradition of fugitives from North Carolina, having certain emergency war powers as Commander-in-Chief of the state military, and entering into interstate compacts and agreements with the federal government on various subjects ranging from nuclear energy to National Guard activities to child custody.

PROGRAM INFORMATION:

Objectives and Measures	1991-92 Actual	1992-93 Actual	1993-94 Actual	1994-95 Estimate	1995-96 Projected	1996-97 Projected
1. Operate the Office of Communications which deals with media news releases and responds to public inquiries addressed to the Governor's Office.						
2. Perform reviews of persons considered for appointments and those considered for all boards and commissions authorized by the General Statutes.						
3. Act as a counsel for the Governor, along with the Attorney General, in legal matters including granting of pardons, commutations, issuing warrants, extraditions, interstate compacts, and other matters requiring legal counsel.						

Objectives and Measures	1991-92 Actual	1992-93 Actual	1993-94 Actual	1994-95 Estimate	1995-96 Projected	1996-97 Projected
4. Serve as liaison with the federal government through the Washington Office.						
5. Advise the Governor on policy and programmatic initiatives and serve as liaison to the General Assembly and other government and private agencies concerning education issues.						
6. Maintain the Governor's schedule and perform all necessary associated activities.						

PURPOSE DETAIL:

Description	1993-94 Actual	1994-95 Authorized	1995-96 Inc/Dec From Authorized	1995-96 Total Recommended	1996-97 Inc/Dec From Authorized	1996-97 Total Recommended
1110 NUMBER OF POSITIONS REQUIREMENTS	40.240	40.240	.000	40.240	.000	40.240
1100 EPA SALARIES	1,613,581	1,690,317	0	1,690,317	572	1,690,889
1500 EMPLOYEE AWARDS/PAYMENTS	411	1,353	0	1,353	0	1,353
1600 PURCHASED SERVICES	70,139	0	0	0	0	0
1800 EMPLOYEE BENEFIT COSTS	356,081	375,418	221	375,639	2,714	378,132
1900 CONTRACTUAL SERVICES	56,361	61,000	0	61,000	0	61,000
2000 SUPPLIES AND MATERIALS	50,036	47,813	0	47,813	0	47,813
3000 CURRENT OBLIGATIONS	245,542	226,579	42,467	269,046	45,144	271,723
4000 FIXED CHARGES & EXPENSES	78,269	63,799	5,000-	58,799	5,000-	58,799
5000 CAPITAL OUTLAY	66,367	20,000	0	20,000	0	20,000
6980 CITIES IN SCHOOLS GRANT	200,000	200,000	0	200,000	0	200,000
8191 TRF TO SUBSEQUENT FY	19,250	0	0	0	0	0
8213 TRF TO DEPT OF CORRECTIO	8,550	0	0	0	0	0
8510 IMPREST CASH FUND	250	150	0	150	0	150
TOTAL REQUIREMENTS	2,764,837	2,686,429	37,688	2,724,117	43,430	2,729,859

Appendix I - Page 2

Description	1993-94 Actual	1994-95 Authorized	1995-96 Inc/Dec From Authorized	1995-96 Total Recommended	1996-97 Inc/Dec From Authorized	1996-97 Total Recommended
ESTIMATED RECEIPTS						
0300 INTER-AGENCY TRANSFERS	1,250	7,731	0	7,731	0	7,731
0400 INTRA-AGENCY TRANSFERS	80,274	150	0	150	0	150
0900 MISCELLANEOUS INCOME	1,897	1,000	0	1,000	0	1,000
TOTAL RECEIPTS	83,421	8,881	0	8,881	0	8,881
NET APPROPRIATION	2,681,416	2,677,548	37,688	2,715,236	43,430	2,720,978

1120 Dues to National Associations

PURPOSE: The purpose of the Dues to National Associations program is to provide memberships in national organizations to keep the Governor aware of new procedures in state governments and to exchange information on common problems to find effective solutions.

PURPOSE DETAIL:

Description	1993-94 Actual	1994-95 Authorized	1995-96 Inc/Dec From Authorized	1995-96 Total Recommended	1996-97 Inc/Dec From Authorized	1996-97 Total Recommended
REQUIREMENTS						
4000 FIXED CHARGES & EXPENSES	335,628	334,998	14,062-	320,936	5,816-	329,182
TOTAL REQUIREMENTS	335,628	334,998	14,062-	320,936	5,816-	329,182
ESTIMATED RECEIPTS						
TOTAL RECEIPTS	0	0	0	0	0	0
NET APPROPRIATION	335,628	334,998	14,062-	320,936	5,816-	329,182

Governor

Statutory Authority: *Article III, Section 5, North Carolina Constitution*

Staff assists the Governor in his deliberations on legal, policy, and administrative matters. Staff are assigned to offices in Washington, D.C., Asheville, New Bern, and to the Executive Residence in Raleigh. Each month, the Office of Citizen's Affairs handles thousands of calls, letters and visits intended for the Governor.

	GENERAL FUND	
	FY 95-96	FY 96-97
Recommended Continuation Budget	**$5,857,348**	**$5,876,386**

Continuation Budget Changes

(1110) Administration

1	**Reduce operating expenses.**		($57,459) R	($57,459) R
	Reduce operating expenses			
	1990 Contracted Services	(26,000)		
	1811 Social Security	(1,989)		
	2000 Supplies and Materials	(20,595)		
	3200 Communications	(6,945)		
	3800 Data Processing Services	(1,930)		

(1130) Intergovernmental Relations

1	**Abolish two positions.**		($60,542) R	($60,542) R
	Abolish two positions			
	1100 Personnel	(60,542)	-2.00	-2.00
2	**Reduce salaries & operating expenses**		($57,800) R	($57,800) R
	Reduce salaries & operating expenses			
	1000 Salaries & Emp. Benefits	(18,800)		
	1990 Contractual Services	(39,000)		

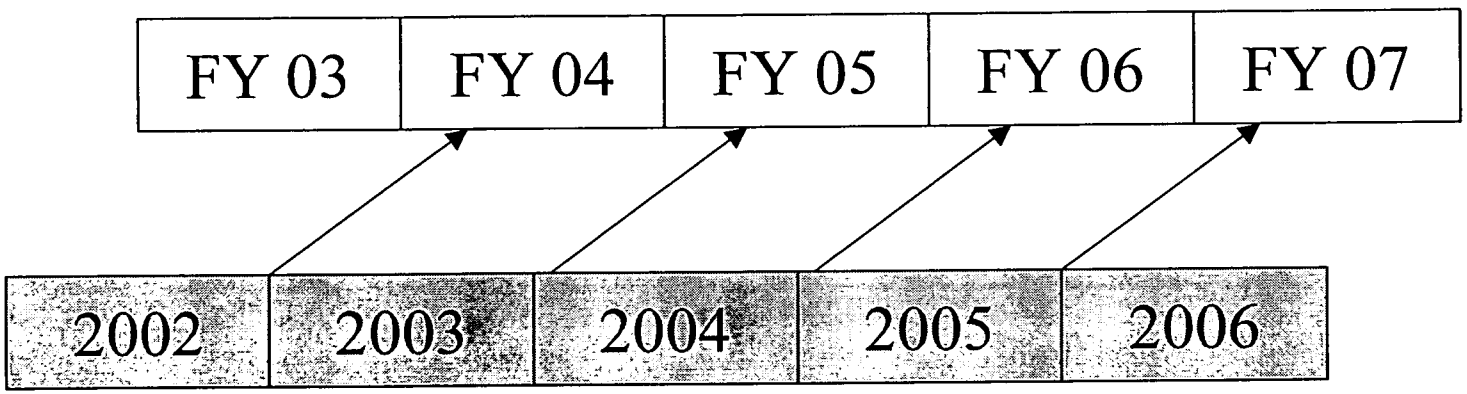
(1140) Office of Ombudsman

1	**Abolish Office of Ombudsman**		($85,249) R	($85,249) R
	Abolish Office of Ombudsman			
	(1.3 Positions Are Eliminated)		-1.30	-1.30
	1000 Salary & Benefits	(75,767)		
	2000 Supplies & Materials	(664)		
	3000 Current Obligations	(6,818)		
	5000 Capital Outlay	(2,000)		

Excerpt from Legislative Week in Review for May 23, 2003:

Hoyle: Of course we spent more money in education. Absolutely. And also with our state employees, and we also made a larger contribution to the state employee health plan, which is in shambles. And I don't know how the House was proposing to only fund about a third of what would be required to keep the plan in actuality sound, just for this year; it has an $8 billion structural deficit in it—the unfunded liability—going forward. So we're trying to be practical, but since we got the budget from the House, we found out we're $400 million short in revenue, based on what we had originally thought. And I commend the House for getting us a budget early; we had high hopes of getting out of here. But another problem that I've got—and I think this is something we're going to be talking about next week, and Senator Rand and I have been talking about this for three or four years—is the economic forecasting. And our history is terrible; we have not hit our numbers in the last four years, and the same people are making the same projections that next year we'll have 3.5 percent revenue growth to the state, and in '04-'05, we'll be 5.5 percent. In my mind, that's just not going to happen. We have no inflation, so we're getting no help there, and we're just putting band-aid on band-aid on band-aid on top of the budget. And we've got to make sure—the only hope for this state for jobs, going forward in the future, is our educational system. We have got to fully fund our universities and our community colleges, and we're making great strides in our public education. Jobs of the future are going to require involvement from the universities—Bayer Pharmaceutical, pharmaceutical manufacturers, those kinds of things—and it's going to take some commitments. So we've got a problem; we need to sit down together and work together in a bipartisan way to make sure that we don't put band-aids, we address the problems that we've got. And we've got serious problems; I heard today, we've all heard, that there's money coming, hopefully, from the federal government; $20 billion is going to be divided by the states. Where can we spend it? What kind of strings are going to be attached to it? If they'll tell me when the check's ready, I'd like to go to Washington and pick it up. I'll believe it when I see it. But I'm hopeful. But will it be one-time money, or will it be recurring money? That's a major question. We can get through this year, but what about next year?

This is NOT a cap
Every dime gets spent. . .



End Budget Shortfalls Once and For All – Use Real Numbers

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

6-12-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Davis	Electric Cities
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off's Assn.
Jane Upchurch	Progress Energy
Paul Pulley	NCATL
David Crawford	AIA NC
Don Beason	
DAVE CROTTS	FISCAL RESEARCH
Tony Moore	Senator
	MCM
	WCSR
Jack Cozort	PPAB

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

6-12-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Audrey H. Galloway	NCGV
BRUCE THOMPSON	PARKER POE
Dick Taylor	NCATL
Hal Miller	NCACCT
Fran Cockman	NC statewatch
John Phelps	NCLM
Wayne Yancey	Legal Counsel
Dan Wright	SBOE
Gary O. Bartlett	"
Sheree Sanchez	Wake Co BOE
Peg Dorer	Conference of D.A.s
Amy Darden	NC Bar Assn.

VISITOR REGISTRATION SHEET

J.I Comm — Name of Committee

6-12-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joanne Stevens	nursing + NCCMSH
[signature]	AOC
Jeff Rau	GRNC
Roger Eckenrod	GRNC
Randy Lewis	GRNC
Charles Strowd	GRNC
[signature]	NCGA
John McHugh	Gov office
Matt Osborne	AOC
Steve Wall	CCNC
Robert Paschal	Young, Moore

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 10, 2003	8:30 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 79	DNA Registry.	Representative Alexander
HB 471	CDL Changes/Moped Tag.	Representative Crawford, Jr.
HB 497	Remove Sunset/Private Correctional Officers.	Representative Hunter, Jr.
HB 819	Campaigning Outside Polls.	Representative Ellis Representative Miller
HB 1114	School Volunteer Records are Confidential.	Representative Saunders
HB 1126	Collaborative Law Procedures/Family Law.	Representative Hackney
HB 1139	Judicial Approval For Pleas In Certain Cases.	Representative Ellis
SB 760	Local Campaign Finance Options.	Senator Gulley

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

July 10, 2003 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 8:35 a.m. with twelve members present. He introduced Pages, Stephen Hoyle from Chapel Hill, NC and Stephen Billings from Gastonia, NC.

HB-471 (CDL Changes/Moped Tag.) was introduced by Senator Clodfelter. Bill sponsor, Representative James Crawford explained the bill makes several changes to NC law required by federal regulation concerning the effect of certain traffic violations on persons holding commercial drivers licenses, and requires a new "S" school bus driver endorsement. The bill also amends Chapter 20 of the GS to require a permanent identification tag on mopeds. See Bill Summary for further information. No discussion. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

HB-79 (DNA Registry) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Martha Alexander explained that the bill expands the current DNA database to require that DNA samples be taken from anyone convicted of a felony or certain criminal offenses, and fro anyone found not guilty by reason of insanity of a felony or certain other criminal offenses. The act clarifies when a DNA sample will be taken. See Bill Summary for further information. Senator Clodfelter introduced NC Attorney General, Roy Cooper who spoke on the bill. Senator's Tony Rand, Jeanne Lucas, Cecil Hargett, R.C. Soles and Bob Carpenter had questions. Mr. Cooper answered the questions. Senator Clodfelter offered an Amendment to the bill. (See attached) Staff Attorney, Hal Pell explained the Amendment. All members voted in favor of the Amendment. Senator Hargett moved for a Favorable Report. All members voted yes. Motion carried.

HB-497 (Remove Sunset/Private Correctional Officers) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Representative Howard Hunter explained the bill would delete the sunset provision on the authorization for private correctional officers to have powers similar to correctional officers of the Department of Correction. No discussion. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-819 (Campaigning Outside Polls) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Representative Paul Miller explained the bill

would require the local board of elections to provide an area for engaging in election-related activity that is adjacent to the buffer zone for each voting place. See attached Bill Summary for further information. Senator's Tony Rand, Wib Gulley and Jeanne Lucas had questions. Rep. Miller answered the questions. Senator Gulley moved for a Favorable Report. Motion seconded by Senator Lucas. All members voted yes. Motion carried.

HB-1114 (School Volunteer Records are Confidential) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Drew Saunders, Staff Attorney, Walker Reagan explained the bill would make school records regarding volunteers, former volunteers, and persons applying to be volunteers, not public records in most cases. Senator's Tony Rand, Ham Horton, Jeanne Lucas and Wib Gulley had questions. Mr. Peyton Maynard, Rep. Mecklenburg County and Charlotte schools answered the questions. Senator Gulley offered an Amendment to the bill on line eight. The bill was displaced to be heard at the next meeting.

HB-1126 (Collaborative Law Procedures/Family Law (Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley moved for adoption of the Committee Substitute. All members voted yes. Motion carried. As Subcommittee Chair, he explained the bill briefly and asked Staff Attorney, Walker Reagan to explain the changes that were made by the Subcommittee. Bill sponsor, Representative Joe Hackney agreed with the changes. See attached Bill Summary for further information. Senator Wib Gulley moved for a Favorable Report. All members voted yes. Motion carried.

SB-760 (Local Campaign Finance Options) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Senator Wib Gulley explained changes. See attached Bill Summary. Senator's Ham Horton, Vernon Malone and Phillip Berger had questions. Staff Attorney, Bill Gilkeson answered the questions. Mr. Paul Welms, Director, NC Home Builders Association spoke on the bill. Mr. Bob Hall, NC Coalition of NC Voters spoke on the bill. Senator Ham Horton offered an Amendment to the bill on pg.2, lines 16 and 36. See attached Amendment. All members voted in favor of the Amendment. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 9:59 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **760** Local Campaign Finance Options.

Draft Number:	PCS 65338
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, July 10, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2) **471** CDL Changes/Moped Tag.
Sequential Referral: Finance
Recommended Referral: None

H.B. **497** Remove Sunset/Private Correctional Officers.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, July 14, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **819** Campaigning Outside Polls.

Draft Number:	PCS 60390
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **79** DNA Registry.

Draft Number:	PCS 45175
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1126** Collaborative Law Procedures/Family Law.

Draft Number:	PCS 30411
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **79** DNA Registry.

Draft Number:	PCS 45175
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **760** Local Campaign Finance Options.

Draft Number:	PCS 65338
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 471*

Committee Substitute Favorable 4/30/03

Committee Substitute #2 Favorable 6/9/03

Short Title: CDL Changes/Moped Tag. (Public)

Sponsors:

Referred to:

March 13, 2003

A BILL TO BE ENTITLED

AN ACT TO BRING STATE LAW INTO COMPLIANCE WITH RECENTLY ADOPTED FEDERAL REGULATIONS CONCERNING THE EFFECT OF VIOLATION OF RAILROAD CROSSING SAFETY AND OTHER STATE LAWS ON COMMERCIAL DRIVERS LICENSES, AND REQUIRING A NEW "S" ENDORSEMENT FOR PERSONS OPERATING SCHOOL BUSES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE; AND TO REQUIRE A MOPED IDENTIFICATION TAG.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. For the purpose of disqualification only, a prayer for judgment continued, when the offense occurs in a commercial vehicle or the offender holds a commercial drivers license.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

SECTION 2. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial motor vehicle:
a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 3. G.S. 20-17.4 is amended by adding a new subsection to read:

"(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:
(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.
(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.
(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection."

SECTION 4. G.S. 20-37.12 is amended by adding a new subsection to read:

"(f) A person shall not be convicted of failing to carry a commercial drivers license if, by the date the person is required to appear in court for the violation, the person produces to the court a commercial drivers license issued to the person that was valid on the date of the offense."

SECTION 5. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to ~~a person whose license is restricted to driving a school bus or school activity bus or to~~ employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also

waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation."

SECTION 6. G.S. 20-37.16 is amended by adding a new subsection to read:

"(c1) The test for an S endorsement may be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled, or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment."

SECTION 7. Article 3 of Chapter 20 of the General Statutes is amended by adding a new Part to read:

"Part 3B. Moped Identification Tags.

"**§ 20-71.6. Moped identification tags.**

(a) Tags Required. – Every moped, as defined in G.S. 105-164.3 and operated in the State, shall display a permanent identification tag. The tag must display information for identification and enforcement purposes and be approved by the Commissioner.

(b) Duties of Moped Dealer. – A moped dealer shall attach the approved tag to each moped sold by the dealer in this State. The moped dealer may collect a one-time only fee not exceeding twenty-five dollars ($25.00) from the purchaser of the new or used moped. Moped dealers shall make an effort to promote awareness of the tag requirement.

(c) Violations. – A moped dealer who fails to attach a tag to a moped at the time of sale or a person who operates a moped upon the public highways and streets of this State without displaying the tag is guilty of a Class 3 misdemeanor."

SECTION 8. Sections 3, 5, 7, and 8 of this act become effective October 1, 2003. Section 6 of this act becomes effective October 1, 2003, and expires September 30, 2005. The remainder of this act becomes effective January 1, 2005.

HOUSE BILL 471:
CDL Changes/Moped Tag.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Crawford
Date:	July 10, 2003	**Summary by:**	Hal Pell*
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 471 makes several changes to North Carolina law required by federal regulation concerning the effect of certain traffic violations on persons holding commercial drivers licenses, and requires a new "S" school bus driver endorsement. The bill also amends Chapter 20 of the General Statues to require a permanent identification tag on mopeds.***

CURRENT LAW: On July 31, 2002, the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation issued amended regulations concerning commercial drivers license (CDL) holders. In order to comply with these new federal regulations, North Carolina law would have to be amended as described below. Failure to comply with these new federal regulations could result in the loss of Federal–aid highway funds. (49 C.F.R. §384.401).

BILL ANALYSIS:

Section 1

Federal regulation 49 C.F.R. §384.226 prohibits states from "masking" a conviction of a CDL driver for any traffic related violation in any type of vehicle. To comply with this regulation, Section 1 of the PCS amends NC law to include in the definition of "conviction", for purposes of disqualification only, a PJC (Prayer for Judgment Continued) for offenses occurring in a commercial motor vehicle or offenses committed by a person with a CDL.

Section 2

Federal regulation 49 C.F. R. § 383.51 (Table 2) requires disqualification from driving a commercial motor vehicle for specified time periods for conviction of listed serious traffic violations. Section 2 of the PCS amends NC law to include those offenses in NC's definition of "serious traffic violations" when driving a commercial motor vehicle.

Section 3

Federal regulation 49 C.F.R. §383.51 (Table 3) requires disqualification from driving a commercial motor vehicle for violation of certain railroad crossing offenses. Section 3 of the PCS amends NC law to require this disqualification.

Section 4

Federal regulation 49 C.F.R. §383.51 provides that a person shall not be convicted of failing to carry a CDL if, by the court date, the person produces a CDL that was valid at the time of the offense. Section 4 of the PCS amends NC law to conform to this requirement.

Sections 5 and 6

Federal regulation 49 C.F.R. §383.93 and §383.123 require a new S school bus endorsement. Prior to October 1, 2005, states are authorized to grandfather currently licensed school bus drivers. Sections 5 and 6 of the PCS amend NC law to conform to this requirement.

Section 7

This section creates a new provision requiring that all mopeds in the State display a permanent identification tag. A moped dealer may charge a fee (not exceeding $25) to the purchasers of new or used mopeds. A dealer failing to attach a tag at the time of sale, or a person operating a moped without displaying a tag, is guilty of a Class 3 misdemeanor.

EFFECTIVE DATE: Section 3 (requiring CDL disqualification for railroad crossing offenses), Section 5 (requiring new S school bus endorsement), Section 7 (moped tag) and Section 8 (effective date clause) of this act would become effective October 1, 2003. Section 6 (school bus driver grandfather clause) would become effective October 1, 2003, and expire September 30, 2005 (as required by federal regulations). The remaining sections of this act would become effective January 1, 2005.

H471-smrk-01

*Giles Perry contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 471*

Short Title:	CDL/DWI Changes.	(Public)
Sponsors:	Representative Crawford.	
Referred to:	Transportation, if favorable, Judiciary I.	

March 13, 2003

A BILL TO BE ENTITLED

AN ACT TO BRING STATE LAW INTO COMPLIANCE WITH RECENTLY ADOPTED FEDERAL REGULATIONS CONCERNING THE EFFECT OF VIOLATION OF IMPAIRED DRIVING, RAILROAD CROSSING SAFETY, AND OTHER STATE LAWS ON COMMERCIAL DRIVERS LICENSES, AND REQUIRING A NEW "S" ENDORSEMENT FOR PERSONS OPERATING SCHOOL BUSES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. For the purpose of disqualification only, a prayer for judgment continued, when the offense occurs in a commercial vehicle or the offender holds a commercial drivers license.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

SECTION 2. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 3. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no

pending offenses for which the person's license had been or is revoked under this section. If the offense occurs in a commercial motor vehicle or if the person holds a commercial license, the period of disqualification shall not be less than one year. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

SECTION 4. G.S. 20-17.4 is amended by adding a new subsection to read:

"(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.

(2) A person is disqualified for a period of 120 days if convicted during any 3-year period of a second violation of any combination of railroad grade crossing offenses listed in this section.

(3) A person is disqualified for a period of one year if convicted during any 3-year period of a third or subsequent violation of any combination of railroad grade crossing offense listed in this subsection."

SECTION 5. G.S. 20-37.12 is amended by adding a new subsection to read:

"(f) A person shall not be convicted of failing to carry a commercial drivers license if, by the date the person is required to appear in court for the violation, the person produces to the court a commercial drivers license issued to the person that was valid on the date of the offense."

SECTION 6. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials.

To obtain an ~~H or~~ H, S or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an ~~H or~~ H, S or an X endorsement and each time a person renews an ~~H or~~ H, S or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years. An applicant who has an S endorsement issued by another state who applies for an S endorsement shall take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.123 within the preceding two years.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to ~~a person whose license is restricted to driving a school bus or school activity bus or to~~ employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.
b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.
c. Is not used in the operations of a for-hire motor carrier.
d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation."

SECTION 7. G.S. 20-37.16 is amended by adding a new subsection to read:

"(c1) The test for an S endorsement may be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, that the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.
(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled or the applicant was not disqualified from operating a commercial motor vehicle.
(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.
(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.
(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.
(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.
(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment."

SECTION 8. Sections 4 and 8 of this act become effective October 1, 2003. Section 7 of this act becomes effective January 1, 2005, and expires September 30, 2005. The remainder of this act becomes effective January 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 79*

Committee Substitute Favorable 4/8/03
Third Edition Engrossed 6/25/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H79-PCS45175-RK-68

Short Title: DNA Registry. (Public)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES OR WHO IS FOUND NOT GUILTY BY REASON OF INSANITY OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES, TO CLARIFY WHEN THAT SAMPLE IS TAKEN, AND TO CLARIFY CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.1 reads as rewritten:

"**§ 15A-266.1. Policy.**

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion is facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 2. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. Blood sample required for DNA analysis upon ~~conviction.~~conviction or finding of not guilty by reason of insanity.**

(a) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on ~~On~~ or after ~~1 July 1994;~~December 1, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321 shall have a DNA sample drawn upon intake to ~~a jail or prison.~~jail, prison, or the mental health facility. In addition, every person convicted on

or after ~~1 July 1994,~~December 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to ~~1 July 1994~~ December 1, 2003, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321 before December 1, 2003, shall have a DNA sample drawn before parole or release from the penal ~~system.~~system or before release from the mental health facility.

(b) Crimes covered by this Article ~~include:~~include all of the following:

(1) All felonies.

~~G.S. 14-17 — Murder in the first and second degree.~~
~~G.S. 14-27.2 — First degree rape.~~
~~G.S. 14-27.3 — Second degree rape.~~
~~G.S. 14-27.4 — First degree sexual offense.~~
~~G.S. 14-27.5 — Second degree sexual offense.~~
~~G.S. 14-28 — Malicious castration.~~
~~G.S. 14-29 — Castration or other maiming.~~
~~G.S. 14-30 — Malicious maiming.~~
~~G.S. 14-30.1 — Malicious throwing of corrosive acid or alkali.~~
~~G.S. 14-31 — Malicious assault in secret manner.~~
~~G.S. 14-32 — Felonious assault with deadly weapon with intent to kill.~~

(2) G.S. 14-32.1 — Assaults on handicapped persons.

~~G.S. 14-34.1 — Discharging barreled weapon or firearm into occupied property.~~
~~G.S. 14-34.2 — Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.~~
~~G.S. 14-39(a)(3) — Kidnapping for the purpose of doing serious bodily harm to the person.~~
~~G.S. 14-49 — Malicious use of explosive or incendiary.~~
~~G.S. 14-58.2 — Burning of mobile home, manufactured-type house, or recreational trailer home.~~
~~G.S. 14-202.1 — Taking indecent liberties with children.~~
~~G.S. 14-87 — Robbery with a dangerous weapon.~~

(3) G.S. 14-277.3 — Stalking.

~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 3. G.S. 15A-266.6 reads as rewritten:

"**§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

(a) Each DNA sample required to be drawn pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn ~~at a prison or jail unit to be specified by the sentencing court.~~immediately following sentencing.

The sentencing court shall order any person not sentenced to a term of confinement to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16.

(b) Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample.

(c) The SBI shall provide to the sheriff the materials and supplies necessary to draw a DNA sample from a person not sentenced to a term of confinement. Any DNA sample drawn from a person not sentenced to a term of confinement shall be taken using the materials and supplies provided by the SBI."

SECTION 4. G.S. 15A-266.12 reads as rewritten:

"**§ 15A-266.12. Confidentiality of records.**

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system ~~not be used for any purpose other than to facilitate~~ for the purpose of facilitating the personal identification of ~~an offender;~~ the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons."

SECTION 5. This act becomes effective December 1, 2003.

HOUSE BILL 79: DNA Registry.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Alexander
Date:	July 10, 2003	**Summary by:**	Hal Pell
Version:	PCS		Committee Co-Counsel

SUMMARY:

House Bill 79 expands the current DNA database to require that DNA samples be taken from anyone convicted of a felony or certain other criminal offenses, and from anyone found not guilty by reason of insanity of a felony or certain other criminal offenses. The act clarifies when a DNA sample will be taken.

CURRENT LAW: The current law requires a DNA sample from anyone convicted of one of the felonies or misdemeanors specifically listed in the statute.

BILL ANALYSIS:

Section 1: Amends the policy statement for the DNA database to reflect the change to include all felonies.

Section 2: Amends G.S. 15A-266.4 to require that a DNA sample be taken from:

- Any person convicted of any felony and
- Any person found not guilty of any felony by reason of insanity,

unless a previous sample has been obtained and has not been expunged from the database. The statute still retains the two misdemeanors currently in the law (assaults on handicapped persons and stalking).

Section 3: Amends G.S. 15A-266.6 to clarify the procedure for taking DNA samples from persons who are not sentenced to a term of confinement. The person reports immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time and location at which the sample shall be taken, and the court shall enter that date, time and location into its order. A copy of the court order is provided to the sheriff. If the person does not appear at the designated time, the sheriff shall inform the court. The court may issue an order to show cause and an order for arrest pursuant to criminal contempt procedures.

This section also amends G.S. 15A-266.6 further to require the SBI to provide the testing kits to the sheriff and to also require the sheriff to use only the kits provided by the SBI.

Section 4: Provides that the act is effective December 1, 2003.

H79pcs-smrk-01

*Summary contribution by Susan Sitze, Staff Attorney.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 79*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H79-ARK-40 [v.1]

Date 7-10-03 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator Clodfelter

moves to amend the bill on page 3, between lines 21 and line 22, by adding a new Section 4 as follows:

"**SECTION 4.** G.S. 15A-266.12 reads as rewritten:
'**§ 15A-266.12. Confidentiality of records.**

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system ~~not be used for any purpose other than to facilitate~~ for the purpose of facilitating the personal identification of ~~an offender;~~ the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.'",

and by renumbering the succeeding Sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 79*

Short Title:	DNA Registry.	(Public)
Sponsors:	Representatives Alexander; Saunders and Pate.	
Referred to:	Judiciary I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL OFFENSES AND TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample.**

(a) The following definitions apply in this section:

(1) 'DNA'. – As defined in G.S. 15A-266.2.

(2) 'DNA Record'. – As defined in G.S. 15A-266.2.

(3) 'DNA Sample'. – A sample of body tissue, blood, or other bodily fluid that is appropriate for DNA testing or analysis by the SBI Laboratory pursuant to Article 13 of Chapter 15A of the General Statutes. The term includes a DNA blood sample as defined in G.S. 15A-266.2 and a DNA fluid or tissue sample as defined in G.S. 15A-266.2.

(4) 'SBI'. – State Bureau of Investigation.

(b) Any person who is arrested for committing any of the following offenses must provide his or her DNA sample pursuant to this section for DNA analysis and testing:

(1) Any Class A through E felony unless the offense is a violation of Chapter 90 or Chapter 143 of the General Statutes or is a larceny or embezzlement offense. For purposes of this subdivision, the term 'larceny or embezzlement offense' is a violation of G.S. 14-74, 14-100, 53-129, 58-2-162, or 105-236(9a)a., or Article 18 of Chapter 14 of the General Statutes.

(2) G.S. 14-32.1 Assaults on handicapped persons.

(3) G.S. 14-277.3 Stalking.

(c) It is the duty of the arresting law enforcement officer to obtain the arrested person's DNA sample and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. A qualified member of the health profession shall take the DNA sample. No unreasonable or unnecessary force shall be used to obtain the DNA sample.

(d) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the State Bureau of Investigation in the State DNA Databank pursuant to Article 13 of Chapter 15A of the General Statutes."

SECTION 2. G.S. 15A-266.1 reads as rewritten:

"**§ 15A-266.1. Policy.**

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion is facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 3. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.

(2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

~~(4)~~(2a) "DNA Blood Sample" in this Article means a blood sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.

(2b) "DNA Fluid or Tissue Sample" in this Article means a sample of saliva, hair, body tissue, or bodily fluid other than blood that is provided by a person arrested for certain felonies and submitted for DNA analysis as required by G.S. 15A-502A.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA

sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" in this Article means a sample of body tissue, blood, or other bodily fluid that is appropriate for DNA testing or analysis by the SBI Laboratory pursuant to this Article. The term includes both DNA blood samples and DNA fluid or tissue samples.

(5) "FBI" means the Federal Bureau of Investigation.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article."

SECTION 4. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. Blood sample required for DNA analysis upon conviction.**

(a) On or after ~~1 July 1994~~,December 1, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section shall have a DNA sample drawn upon intake to a jail or prison. In addition, every person convicted on or after ~~1 July 1994~~,December 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to ~~1 July 1994~~ December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article ~~include:~~include all of the following:

(1) All felonies.

~~G.S. 14-17 — Murder in the first and second degree.~~
~~G.S. 14-27.2 — First degree rape.~~
~~G.S. 14-27.3 — Second degree rape.~~
~~G.S. 14-27.4 — First degree sexual offense.~~
~~G.S. 14-27.5 — Second degree sexual offense.~~
~~G.S. 14-28 — Malicious castration.~~
~~G.S. 14-29 — Castration or other maiming.~~
~~G.S. 14-30 — Malicious maiming.~~

~~G.S. 14-30.1 — Malicious throwing of corrosive acid or alkali.~~
~~G.S. 14-31 — Malicious assault in secret manner.~~
~~G.S. 14-32 — Felonious assault with deadly weapon with intent to kill.~~
(2) G.S. 14-32.1 — Assaults on handicapped persons.
~~G.S. 14-34.1 — Discharging barreled weapon or firearm into occupied property.~~
~~G.S. 14-34.2 — Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.~~
~~G.S. 14-39(a)(3) — Kidnapping for the purpose of doing serious bodily harm to the person.~~
~~G.S. 14-49 — Malicious use of explosive or incendiary.~~
~~G.S. 14-58.2 — Burning of mobile home, manufactured-type house, or recreational trailer home.~~
~~G.S. 14-202.1 — Taking indecent liberties with children.~~
~~G.S. 14-87 — Robbery with a dangerous weapon.~~
(3) G.S. 14-277.3 — Stalking.
~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 5. G.S. 15A-266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~blood, other bodily fluid, or tissue samples.**

(a) The tests to be performed on each ~~blood~~ blood, other bodily fluid, or tissue sample are:

(1) To analyze and type the genetic markers contained in or derived from the DNA.
(2) For law enforcement identification purposes.
(3) For research and administrative purposes, including:
a. Development of a population database when personal identifying information is removed.
b. To support identification research and protocol development of forensic DNA analysis methods.
c. For quality control purposes.
d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank."

SECTION 6. The catch line of G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample.~~blood, other bodily fluid, or tissue samples.**"

SECTION 7. G.S. 15A-266.8 reads as rewritten:

"**§ 15A-266.8. DNA database exchange.**

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and G.S. 15A-502A and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ blood, other bodily fluid, and tissue samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

SECTION 8. G.S. 15A-1382 reads as rewritten:

"**§ 15A-1382. Reports of disposition; ~~fingerprints.~~fingerprints and DNA samples.**

(a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. When a DNA sample is taken from the defendant pursuant to G.S. 15A-502A prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition.

(b) When a defendant is found guilty of any felony, regardless of the class of felony, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation.

(c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-502A prior to the disposition of the case, then a DNA sample shall be taken from

the felon in accordance with Article 13 of this Chapter and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation as provided by Article 13 of this Chapter."

SECTION 9. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile pursuant to G.S. 15A-502A."

SECTION 10. This act becomes effective December 1, 2003. Section 1 of this act applies to arrests made on or after December 1, 2003.

HOUSE BILL 497:
Remove Sunset/Private Correctional Officers.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Hunter
Date:	July 10, 2003	**Summary by:**	Hal Pell*
Version:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 497 would delete the sunset provision on the authorization for private correctional officers to have powers similar to correctional officers of the Department of Correction. The bill is effective when it becomes law.

CURRENT LAW: In 2001, the General Assembly enacted S.L. 2001-378 (SB 137). The act authorizes correctional officers and security supervisors in private facilities, under contract to the Federal Bureau of Prisons, to have the same power to use force and make arrests as employees of the North Carolina Department of Correction (DOC). Prior to the act, State law did not grant police powers to correctional officers working for private corporations that operate federal prisons in the State. The act took effect August 18, 2001, and expires August 18, 2003.

In order for private correctional officers to have the powers granted under the act, a number of requirements were imposed:

- DOC must determine that the private companies' employment practices meet the minimum standards followed by DOC in hiring its own personnel.
- The private officers and supervisors must (i) be certified as correctional officers under Chapter 17C of the General Statutes, which provides for oversight by the North Carolina Criminal Justice Education and Training Standards Commission, or (ii) have completed a training curriculum that meets or exceeds those of the Commission for correctional personnel.
- The private corporation must maintain liability insurance with a minimum level of $10,000,000 per occurrence, and $25,000,000 aggregate per occurrence.
- The private corporation must defend, indemnify, and hold harmless the State from any claims arising out of the operation of the private correctional facility or the granting of the powers under the act.
- The corporation must follow certain procedures if an escape occurs and must reimburse the State and any county or other law enforcement agency for the full cost of additional expenses incurred due to an escape.
- The corporation must bear the reasonable costs of services provided by DOC.
- DOC was directed to adopt rules to implement the act.

BILL ANALYSIS: House Bill 497 would amend the 2001 Session Law by removing the sunset provision. The act is effective when it becomes law.

H497-smrk-01

*Summary Contribution by: Steve Rose, Staff Attorney, and Robin Johnson, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 497

Short Title:	Remove Sunset/Private Correctional Officers.	(Public)
Sponsors:	Representative Hunter.	
Referred to:	Judiciary II.	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE AUTHORIZATION FOR CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2001-378 reads as rewritten:

"**SECTION 7.** This act is effective when it becomes ~~law,~~ law and applies to private correctional facilities and the employees of those correctional facilities constructed and contracted to be operated by the effective date of this ~~act, and expires two years after the effective date.~~ act."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 819
PROPOSED SENATE COMMITTEE SUBSTITUTE H819-CSRR-39 [v.1]

6/30/2003 4:24:07 PM

Short Title: Campaigning Outside Polls. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REQUIREMENT THAT THE COUNTY BOARDS OF ELECTIONS MUST PROVIDE BEYOND THE BUFFER ZONE AROUND THE VOTING PLACE A SPACE WHERE CAMPAIGNING AND OTHER ELECTION-RELATED ACTIVITY CAN BE CONDUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-166.4 reads as rewritten:

"**§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.**

(a) Buffer Zone and Adjacent Area for Election-Related Activity. -- No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at more than 50 feet or at less than 25 feet. ~~The~~ Except as provided in subsection (b), the county board of elections shall ~~also, where practical,~~ also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity.

(b) Special Agreements About Election-Related Activity -- The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a non-public building to use the building as a voting place on the condition that election-related activity as described in subsection (a) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

(1) That no other suitable voting place can be secured for the precinct.

(2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.

(3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

An agreement under this subsection shall be valid for as long as the non-public building is used as a voting place.

(c) Notice About Buffer Zone. -- No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.

(2) The distance the buffer zone extends from that door.

(3) Any available information concerning where political activity, including sign placement, ~~that~~ is permitted beyond the buffer zone."

SECTION 2. This act becomes effective January 1, 2004.

HOUSE BILL 819:
Campaigning Outside Polls.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representatives Miller and Ellis
Date:	June 30, 2003		
Version:	H819-CSRR-39[v.1]	**Summary by:**	William R. Gilkeson Committee Co-Counsel

SUMMARY: ***This PCS for House Bill 819 would require the local board of elections to provide an area for engaging in election-related activity that is adjacent to the buffer zone for each voting place. But it would permit a county board of elections, with the approval of the Executive Director of the State Board of Elections, to enter into an agreement to use a non-public building as a polling place on the condition of no signs or politicking adjacent to the buffer zone on the grounds of the building. The Executive Director, in order to approve such an agreement, would have to find that no other suitable voting place was available for the precinct, that the county would require the chief judge to monitor the grounds to make sure the restriction was enforced equally, and that the pattern of polling places without outside campaigning is not discriminatory. Effective 1-1-04.***

CURRENT LAW: At polling places, within the voting place or the buffer zone around the voting place, persons are not allowed to hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. *G.S. 163-166.4.* In setting the buffer zone for each voting place, the county board of elections must set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed. To take into account varying building and lot designs, the buffer zone may be less that 50 feet if necessary, but in no event may it be less than 25 feet. *163-166.4*

The county board of elections is also required, **where practical,** to provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. *163-166.4*

A county board of elections may "demand and use" a tax-supported or tax-maintained building as a voting place. But the board has no such right to use a private building such as a church. *163-129, see copied on other side.* However, churches and other private buildings sometimes agree to be voting places.

As to where a voting place for a precinct can be, the basic statutory rule is that it must be "within the precinct or on a tract or lot adjoining the precinct." *163-129.* However, with a unanimous vote and with the approval of the State Election Director, a county board of elections may designate a building outside the precinct as its voting place. *163-130.1, see copied on other side.*

BILL ANALYSIS: The PCS would **require** the local board of elections to provide an area adjacent to the buffer zone at each polling place for the purposes of election-related activities prohibited in the buffer zone, rather than provide such an area where practical. However, it would permit a county board of elections, with the approval of the Executive Director of the State Board of Elections, to enter into an agreement to use a non-public building as a polling place on the condition of no signs or politicking adjacent to the buffer zone on the grounds of the building. The Executive Director, in order to approve such an agreement, would have to find all the following:

1. That no other suitable voting place was available for the precinct.
2. That the county will require the chief judge to monitor the grounds to make sure the restriction was enforced equally.
3. That the pattern of polling places without outside campaigning is not discriminatory.

The PCS also provides that, absent a State-approved agreement, the county cannot set the buffer zone more than 50 feet from the door to the voting place.

The original version of this summary was written by Erika Churchill.

§ 163-129. Structure at voting place; marking off limits of voting place.

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections may require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17; 1967, c. 775, s. 1; 1973, c. 793, s. 54; 1983, c. 411, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 34; 1999-426, s. 5(a).)

§ 163-130.1. Out-of-precinct voting places.

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Director. Approval by the Executive Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;
(2) Adequate notification and publicity are provided to notify voters in the precinct of the new polling location;
(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation;
(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters; and
(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Director annually to determine whether it is still the only available alternative for that precinct. (1999-426, s. 3(a); 2001-319, ss. 3(a), 11.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 819

Short Title:	Campaigning Outside Polls.	(Public)
Sponsors:	Representatives Miller, Ellis (Primary Sponsors); Barnhart, Blackwood, Blust, Bowie, Capps, Culp, Frye, Gorman, Gulley, Hilton, Holmes, Howard, Hunter, L. Johnson, Justice, Justus, Kiser, LaRoque, Lewis, Luebke, McGee, McHenry, Michaux, Moore, Munford, Pate, Preston, Ray, Setzer, Sexton, Stam, Walend, Walker, West, K. Williams, C. Wilson, and G. Wilson.	
Referred to:	Election Law and Campaign Finance Reform.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REQUIREMENT THAT THE COUNTY BOARDS OF ELECTIONS MUST PROVIDE BEYOND THE BUFFER ZONE AROUND THE VOTING PLACE A SPACE WHERE CAMPAIGNING AND OTHER ELECTION-RELATED ACTIVITY CAN BE CONDUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-166.4 reads as rewritten:

"**§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.**

No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at less than 25 feet. The county board of elections shall ~~also, where practical,~~ also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.

(2) The distance the buffer zone extends from that door.

(3) Any available information concerning where political activity, including sign placement, ~~that~~ is permitted beyond the buffer zone."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1114
PROPOSED SENATE COMMITTEE SUBSTITUTE H1114-CSRU-39 [v.3]

6/5/2003 1:13:16 PM

Short Title: School Volunteer Records Are Confidential. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE VOLUNTEER FILES MAINTAINED BY LOCAL BOARDS OF EDUCATION PRIVATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-209.1. Nondisclosure of certain volunteer records.**

(a) All records of a local school administrative unit regarding volunteers, former volunteers, and persons applying to be volunteers are not public records as provided in Chapter 132 of the General Statutes. These records shall be open for inspection only to the following persons:

(1) The volunteer, former volunteer, person who applied to be a volunteer, or that person's properly authorized agent who may examine the person's file in its entirety at any reasonable time;

(2) The superintendent and other supervisory personnel;

(3) The parent or guardian of any student with whom the volunteer has or had contact;

(4) Members of the local board of education and the board's attorney; and

(5) A party, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with that subpoena or court order.

(b) A local board of education shall also release or permit the inspection of a volunteer file, except as prohibited by State or federal law, if prior to the release of the information or inspection of the file:

(1) The local board of education determines that the release of the information or inspection of the file is essential (i) to maintaining the integrity of the local board of education or (ii) to maintaining the level or quality of services provided by the local board of education; or

(2) The local board of education finds that there is a substantial showing of the foregoing criteria; and

(3) The local board of education prepares a memorandum setting forth the local board of education's reasons for releasing the records or permitting the inspection of the files. This memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) A volunteer shall be notified at the time the person applies to volunteer that the local board of education may maintain a volunteer file on the person, and that information in that file may be open to inspection in accordance with this section.

(d) As used in this section, a volunteer is a person who provides services to a local board of education without expectation of compensation and with the understanding that the local board of education is under no obligation to continue accepting those services or to compensate the volunteer for them.

(e) This section shall not be construed to require a local school administrative unit to maintain records on volunteers, former volunteers, or persons applying to be volunteers."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1114:
School Volunteer Records/ Nondisclosure.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Saunders
Date:	July 10, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1114-CSRU-39 [v.3]		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1114 would make school records regarding volunteers, former volunteers, and persons applying to be volunteers not public records in most cases.***

CURRENT LAW: There is a general legal duty of school boards to use reasonable care in selecting, training, and supervising volunteers. Consequently, it is recommended that boards have policies for selecting and using volunteers. For certain volunteer positions, particularly where there will be student contact and limited supervision, it also is recommended that a background check, which may include a criminal records check, be done. Currently, all school board records are public, unless statutorily made confidential. Thus, student and certain personnel records are not public. A volunteer may expect privacy; however, except for a volunteer's criminal history report received from the SBI, a volunteer's record is considered a public record. It is possible that releasing or making public negative information concerning a volunteer would have the potential of becoming the basis of a defamation lawsuit. However, the information would need to be false. Even if the information was false, the board would not be found liable if the person who released the information did so in good faith and while upholding a valid interest (e.g., maintaining a safe school) or pursuing a legal right or duty, and the person who heard the information had a corresponding interest, right, or duty.

BILL ANALYSIS: The bill would add a new G.S. 115C-209.1 to the Community Schools Act. This new section would provide that all school records regarding volunteers are not open to public inspection under the Public Records Act. Volunteers are defined as persons who provide services to the board without expectation of compensation and with the understanding that the board is not obligated to accept the services of pay for them.

The volunteers, superintendent, school supervisory personnel, members of the local board, the school board's attorney, the parent or guardian of any student with whom the volunteer has or had contact, and a party by authorization of a subpoena or court record, would be permitted to inspect the records. The new section also would require the release or inspection of these records when the board determines or finds the release or inspection is essential to maintaining the integrity of the board OR to maintaining the level or quality of services provided by the board AND the board prepares a written memorandum with its reasons for release or inspection. The superintendent must keep the memorandum, which is a public record.

The bill requires that volunteers be notified at the time they apply to volunteer that a file will be maintained on them and that the information in the file may be open to inspection under circumstances set forth in the bill.

The bill would not require school systems to maintain records related to volunteers.

EFFECTIVE DATE: This bill is effective when it becomes law.

This summary was substantially contributed to by Robin Johnson, Counsel, House Education Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1126

Committee Substitute Favorable 4/23/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1126-PCS30411-RU-44

Short Title: Collaborative Law Procedures/Family Law. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Collaborative Law Proceedings.

"**§ 50-70. Collaborative law.**

As an alternative to judicial disposition of issues arising in a civil action under this Article, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedures as set forth in this Article.

"**§ 50-71. Definitions.**

As used in this article, the following terms mean:

(1) Collaborative law. – A procedure in which a husband and wife who are separated and are seeking a divorce, or are contemplating separation and divorce, and their attorneys agree to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis. The procedure shall include an agreement by the parties to attempt to resolve their disputes without having to resort to judicial intervention, except to have the court approve the settlement agreement and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The procedure shall also include an agreement where the

parties' attorneys agree not to serve as litigation counsel, except to ask the court to approve the settlement agreement.

(2) Collaborative law agreement. – A written agreement, signed by a husband and wife and their attorneys, that contains an acknowledgement by the parties to attempt to resolve the disputes arising from their marriage in accordance with collaborative law procedures.

(3) Collaborative law procedures. – The process for attempting to resolve disputes arising from a marriage as set forth in this Article.

(4) Collaborative law settlement agreement. – An agreement entered into between a husband and wife as a result of collaborative law procedures that resolves the disputes arising from the marriage of the husband and wife.

(5) Third-party expert. – A person, other than the parties to a collaborative law agreement, hired pursuant to a collaborative law agreement to assist the parties in the resolution of their disputes.

"**§ 50-72. Agreement requirements.**

A collaborative law agreement must be in writing, signed by all the parties to the agreement and their attorneys, and must include provisions for the withdrawal of all attorneys involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.

"**§ 50-73. Tolling of time periods.**

A validly executed collaborative law agreement shall toll all legal time periods applicable to legal rights and issues under law between the parties for the amount of time the collaborative law agreement remains in effect. This section applies to any applicable statutes of limitations, filing deadlines, or other time limitations imposed by law or court rule, including setting a hearing or trial in the case, imposing discovery deadlines, and requiring compliance with scheduling orders.

"**§ 50-74. Notice of collaborative law agreement.**

(a) No notice shall be given to the court of any collaborative law agreement entered into prior to the filing of a civil action under this Article.

(b) If a civil action is pending, a notice of a collaborative law agreement, signed by the parties and their attorneys, shall be filed with the court. After the filing of a notice of a collaborative law agreement, the court shall take no action in the case, including dismissal, unless the court is notified in writing that the parties have done one of the following:

(1) Failed to reach a collaborative law settlement agreement.

(2) Both voluntarily dismissed the action.

(3) Asked the court to enter a judgment or order to make the collaborative law settlement agreement an act of the court in accordance with G.S. 50-75.

"**§ 50-75. Judgment on collaborative law settlement agreement.**

A party is entitled to an entry of judgment or order to effectuate the terms of a collaborative law settlement agreement if the agreement is signed by each party to the agreement.

"**§ 50-76. Failure to reach settlement; disposition by court; duty of attorney to withdraw.**

(a) If the parties fail to reach a settlement and no civil action has been filed, either party may file a civil action, unless the collaborative law agreement first provides for the use of arbitration or alternative dispute resolution.

(b) If a civil action is pending and the collaborative law procedures do not result in a collaborative law settlement agreement, upon notice to the court, the court may enter orders as appropriate, free of the restrictions of G.S. 50-74(b).

(c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this section, the attorneys representing the parties in the collaborative law proceedings may not represent either party in any further civil proceedings and shall withdraw as attorney for either party.

"**§ 50-77. Privileged and inadmissible evidence.**

(a) All statements, communications, and work product made or arising from a collaborative law procedure are confidential and are inadmissible in any court proceeding. Work product includes any written or verbal communications or analysis of any third-party experts used in the collaborative law procedure.

(b) All communications and work product of any attorney or third-party expert hired for purposes of participating in a collaborative law procedure shall be privileged and inadmissible in any court proceeding, except by agreement of the parties.

"**§ 50-78. Alternate dispute resolution permitted.**

Nothing in this Article shall be construed to prohibit the parties from using, by mutual agreement, other forms of alternate dispute resolution, including mediation or binding arbitration, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' attorneys for the collaborative law proceeding may also serve as counsel for any form of alternate dispute resolution pursued as part of the collaborative law agreement.

"**§ 50-79. Collaborative law procedures surviving death.**

Consistent with G.S. 50-20(l), the personal representative of the estate of a deceased spouse may continue a collaborative law procedure with respect to equitable distribution that has been initiated by a collaborative law agreement prior to death, notwithstanding the death of one of the spouses. The provisions of G.S. 50-73 shall apply to time limits applicable under G.S. 50-20(l) for collaborative law procedures continued pursuant to this section."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 1126:
Collaborative Law Procedure/Family Law.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Hackney
Date:	July 10, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1126-CSRU-44 [v.7]		

SUMMARY: The Proposed Senate Committee Substitute for House Bill 1126 would establish collaborative law procedures in Chapter 50 of the General Statutes whereby parties seeking a divorce and their attorneys may settle their disputes by written agreement with limited judicial intervention.

CURRENT LAW: Husbands and wives can resolve marital disputes (divorce, alimony, child custody, child support, property division) by separation agreements, consent orders or by trial. Other than settlement offers made in settlement negotiation, all statements and evidence between the parties is generally admissible. There is currently no requirement that an attorney who attempts to negotiate an unsuccessful settlement agreement must withdraw from representing the party in the ultimate court action.

BILL ANALYSIS: **Section 1** of the Proposed Senate Committee Substitute for House Bill 1126 would create a new Article 4 in Chapter 50 of the General Statutes. Chapter 50 covers divorce, alimony and child support generally.

G.S. 50-70 would authorize the use of collaborative law proceedings to settle issues arising from the dissolution of a marital relationship.

G.S. 50-71 defines varies terms. "Collaborative law" is defined as a procedure in which parties who are separated and are seeking a divorce, or who are contemplating separation and divorce, and their counsel agree, in writing, to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The definition also requires that the attorneys of the parties agree not to serve a counsel to the parties if the settlement discussions are unsuccessful and the matter has to be resolved in court.

G.S. 50-72 provides that a collaborative law agreement must be in writing, signed by all parties and their attorneys, and includes provisions for the withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.

G.S. 50-73 provides that once a valid collaborative law agreement is entered into, all legal time periods will be suspended for the amount of time the agreement is in effect.

G.S. 50-74 provides that no notice of a collaborative law agreement need be given to the court prior to the filing of a civil action, but after a civil action is filed, the court is to be notified and the court must suspend action in the case until the matter is settled or the collaborative process is terminated.

G.S. 50-75 provides that a party is entitled to judgment on the agreement if each party to the agreement signs the agreement.

G.S. 50-76 allows the parties to file a civil action if they fail to reach a settlement. If the parties agreed to use arbitration or alternative dispute resolution, these procedures must be utilized first. If a civil

action is already pending and no settlement is reached, upon notice to the court by the parties of their failure to reach a settlement, the court may enter orders without further restrictions under this Article. Subsection (c) of this section requires the attorneys representing the parties in the collaborative law proceedings to withdraw as counsel for the parties if a civil action is set for trial.

G.S. 50-77 provides that all communications and other work product of the parties, the attorneys and the third-party experts utilized in the collaborative law procedure are confidential and inadmissible into evidence in any court proceeding, except by agreement of the parties.

G.S. 50-78 provides that nothing in this law prohibits the parties from agreeing to participate in alternative dispute resolution, including mediation and arbitration, and makes it clear that the collaborative law agreement attorneys may participate in this alternative dispute resolution.

G.S. 50-79 provides that an existing collaborative law agreement may be continued for equitable distribution purposes by the personal representative of the estate of a deceased spouse who had agreed to participate in the collaborative law process prior to death. The time limits set for filing an equitable distribution action after death in Senate Bill 394 (S.L. 2003-163 – attached) would be stayed by the collaborative law process to the same extent as if the spouse had survived.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

This summary was substantially contributed to by Susan Sitze, Counsel to the House Judiciary I Committee.

SENATE BILL 394
Session Law 2003-168

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) ~~A pending action for equitable distribution shall not abate upon the death of a party.~~

(1) A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death.

(2) The provisions of Article 19 of Chapter 28A of the General Statutes shall be applicable to a claim for equitable distribution against the estate of the deceased spouse.

(3) Any ~~c~~laim for equitable distribution against the surviving spouse made by the estate of the deceased spouse must be filed with the district court within one year of the date of death of the deceased spouse or be forever barred."

SECTION 2. The catch line for G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital and divisible ~~property upon divorce.~~property.**"

SECTION 3. Article 19 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-19-19. Claims for equitable distribution.**

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of marital or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file an action with the district court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1126

Short Title: Collaborative Law Procedures/Family Law. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Collaborative Law Proceedings.

"**§ 50-65. Collaborative law; definition.**

(a) As an alternative to judicial disposition of issues arising in a civil action under this Chapter, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedure.

(b) Collaborative law is a procedure in which parties who are separated and are seeking a divorce and their counsel agree, in writing, to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The parties' counsel shall not serve as litigation counsel, except to ask the court to approve the settlement agreement.

"**§ 50-66. Agreement requirements.**

A collaborative law agreement must include provisions for all of the following:

(1) Full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case.

(2) Suspending court intervention in the dispute while the parties are using collaborative law procedures.

(3) Hiring experts, as jointly agreed, to be used in the procedure.
(4) Withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.
(5) Other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

"**§ 50-67. Judgment on collaborative law agreement.**

Notwithstanding any other rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

(1) Provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation.
(2) Is signed by each party to the agreement and the attorney of each party.

"**§ 50-68. Acts prohibited by court.**

Subject to G.S. 50-70, unless a party notifies the court that the collaborative law procedures did not result in a settlement, a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute shall not:

(1) Set a hearing or trial in the case.
(2) Impose discovery deadlines.
(3) Require compliance with scheduling orders.
(4) Dismiss the case.

"**§ 50-69. Notice to court of settlement.**

The parties shall notify the court if the collaborative law procedures result in a settlement. However, if the collaborative law procedures do not result in a settlement, the parties shall file the following:

(1) A status report with the court not later than 180 days after the date of the written agreement to use the procedures. The court shall establish what information shall be included in the status report.
(2) A status report within one year from the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

"**§ 50-70. Disposition by court; failure to reach settlement.**

If the collaborative law procedures do not result in a settlement within two years from the date the collaborative law procedures were initiated, upon notice to the court by the parties of their failure to reach a settlement, the court may do either of the following:

(1) Set the civil action for trial on the regular docket.
(2) Dismiss the civil action without prejudice."

SECTION 2. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 760

Judiciary I Committee Substitute Adopted 6/4/03

PROPOSED COMMITTEE SUBSTITUTE S760-CSRR-38 [v.2]

6/18/2003 4:13:36 PM

Short Title: Local Campaign Finance Options. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GRANTS FROM UNIFORM PROGRAMS FOR PUBLIC CAMPAIGN FINANCING DO NOT CONSTITUTE "CONTRIBUTIONS" AND ARE NOT SUBJECT TO RESTRICTIONS ON CONTRIBUTIONS; TO CLARIFY THAT GOVERNMENTS IN CITIES AND COUNTIES OF A CERTAIN SIZE ARE AUTHORIZED TO CONDUCT THOSE PROGRAMS; AND TO REQUIRE A REVIEW OF LOCAL PUBLIC CAMPAIGN FINANCING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of

'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.' The term 'contribution' does not include a grant from a governmental entity under a uniform program of grants to the campaigns of candidates for elective office within the jurisdiction of that governmental entity if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the government, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes. Grants pursuant to such a program are not subject to the contribution limitations of G.S. 163-278.13 and the prohibitions on corporate contributions of G.S. 163-278.15 or G.S. 163-278.19, but shall be reported as if they were contributions in all campaign reports required by law to be filed by the campaigns receiving the grants."

SECTION 2. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-499. Uniform, nondiscriminatory program of public financing of election campaigns.**

A governing body of a county with a population exceeding 80,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for county office in that county if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the county, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for permissible campaign-related expenditures in accordance with guidelines published pursuant to G.S. 163-278.64(d)(5) or other guidelines published by the State Board of Elections.

A governing body of a city with a population exceeding 40,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for city office in that city if: (i) the grants are available as a source of campaign financing for candidates for office who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria drawn by the city, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency,

or party affiliation, and (iii) the grants are restricted to use for permissible campaign-related expenditures in accordance with guidelines published pursuant to G.S. 163-278.64(d)(5) or other guidelines published by the State Board of Elections.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 3. G.S. 153A-445 reads as rewritten:

"**§ 153A-445. Miscellaneous powers found in Chapter 160A.**

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. – Joint Exercise of Powers.

(2) Chapter 160A, Article 20, Part 2. – Regional Councils of Governments.

(3) G.S. 160A-487. – Financial support for rescue squads.

(4) G.S. 160A-488. – Art galleries and museums.

(5) G.S. 160A-492. – Human relations programs.

(6) G.S. 160A-497. – Senior citizens programs.

(7) G.S. 160A-489. – Auditoriums, coliseums, and convention and civic centers.

(8) G.S. 160A-498. – Railroad corridor preservation.

(9) G.S. 160A-499. – Uniform, nondiscriminatory program of public financing of election campaigns.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties."

SECTION 4. No later than 18 months after this act becomes effective, the State Board of Elections shall review a variety of public campaign financing programs for local government elections in the United States, prepare a description of the basic elements generally present, and compile a collection of reference materials for local governments in North Carolina to use in designing their programs.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 760:
Local Campaign Finance Options.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	June 3, 2003	**Summary by:**	William R. Gilkeson
Version:	S760-CSRR-38[v.2]		Committee Co-Counsel

SUMMARY: This PCS for Senate Bill 760 gives express authority to counties over 80,000 population and cities over 40,000 to establish and appropriate funds for uniform public financing programs for candidates for local offices. The bill would also clarify that grants from such a program are not "contributions" subject to the $4,000 limit.

CURRENT LAW: Currently, NC law sets a general limit on contributions of $4,000 per donor per donee per election. *G.S. 163-278.13.* NC prohibits corporate contributions. *G.S. 163-278.19.*

Counties are authorized to levy property taxes to "provide for all federal, State, district and county elections." *G.S. 153A-149.* Cities are authorized to levy property taxes to "provide for all city elections and referendums." *G.S. 160A-209.*

BILL ANALYSIS: The PCS adds language to the definition of "contribution" in the Campaign Finance Act to make clear that a grant to a candidate from a governmental entity under a uniform public campaign financing program is not a "contribution" and is not subject to restrictions on contributions, but must be reported like contributions. *Section 1 of the bill.*

The PCS adds to the G.S. Chapters on cities and counties a provision that expressly grants the governing bodies of counties over 80.000 and cities over 40,000 the authority to appropriate funds for a uniform program of grants to county or city offices if:

- The grants are available to candidates who demonstrate public support and voluntarily accept strict fund-raising and spending restrictions in accordance with set criteria.
- The criteria are drawn to further the public purpose of free elections and do not discriminate on the basis of race, creed, position on issues, incumbency/non-incumbency, or party affiliation.
- The grants are restricted to campaign-related uses in accord with State Board of Elections guidelines. *Secs. 2 and 3.*

In Section 4, the bill would direct the State Board of Elections to review public financing programs for local government elections throughout the US and compile a collection of reference materials for local governments to use.

BACKGROUND: Some local governments in the NC have expressed interest in developing public financing for local campaigns. The Town of Cary actually established a public financing program, administering grants in the 2001 municipal elections. That program was challenged, and two candidates who received grants in excess of $4,000 were ordered by the State Board of Elections to forfeit the excess. That decision was appealed to Superior Court, which upheld the State Board.

On the other side of this sheet is a list, in descending order of population, of NC counties with more than 70,000 population and NC cities with more than 30,000 population. The source is the 2000 Census.

Counties over 70,000 (bill sets 80,000 threshold)		Cities over 30,000 (bill sets 40,000 threshold)	
Mecklenburg	695,454	Charlotte	540,828
Wake	627,846	Raleigh	276,093
Guilford	421,048	Greensboro	223,891
Forsyth	306,067	Durham	187,035
Cumberland	302,963	Winston-Salem	185,776
Durham	223,314	Fayetteville	121,015
Buncombe	206,330	Cary	94,536
Gaston	190,365	High Point	85,839
New Hanover	160,307	Wilmington	75,838
Onslow	150,355	Asheville	68,889
Davidson	147,246	Jacksonville	66,715
Catawba	141,685	Gastonia	66,277
Pitt	133,798	Greenville	60,476
Cabarrus	131,063	Concord	55,977
Alamance	130,800	Rocky Mount	55,893
Randolph	130,454	Chapel Hill	48,715
Rowan	130,340	Burlington	44,917
Union	123,677	Wilson	44,405
Robeson	123,339	Goldsboro	39,043
Iredell	122,660	Hickory	37,222
Johnston	121,965	Kannapolis	36,910
Orange	118,227		
Wayne	113,329		
Cleveland	96,287		
Rockingham	91,928		
Craven	91,436		
Harnett	91,025		
Henderson	89,173		
Burke	89,148		
Nash	87,420		
Caldwell	77,415		
Moore	74,769		
Wilson	73,814		
Brunswick	73,143		
Surry	71,219		

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-10-03

S. B. No. 760 Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS

Rep.) HORTON

Sen.)

moves to amend the bill on page 2, lines 16 and 36

( ) WHICH CHANGES THE TITLE

by and page 3, line 3,

by adding the following at each line:

"and (iv) that unspent grants required to be returned to the local government."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 760

Short Title:	Local Campaign Finance Reform.	(Public)
Sponsors:	Senators Gulley; Allran, Bingham, Carrington, Dalton, Dannelly, Garrou, Hagan, Hartsell, Horton, Kinnaird, Metcalf, Purcell, Rand, Reeves, Shaw, and Soles.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GRANTS FROM UNIFORM PROGRAMS FOR PUBLIC CAMPAIGN FINANCING DO NOT CONSTITUTE "CONTRIBUTIONS" AND ARE NOT SUBJECT TO RESTRICTIONS ON CONTRIBUTIONS; TO CLARIFY THAT CERTAIN CITY AND COUNTY GOVERNMENTS ARE AUTHORIZED TO CONDUCT THOSE PROGRAMS; TO GRANT CITY AND COUNTY GOVERNMENTS LIMITED AUTHORITY TO SET STRICTER LIMITS THAN THOSE IN EFFECT STATEWIDE FOR CONTRIBUTION LIMITS AND REPORTING; AND TO MANDATE AND APPROPRIATE FUNDS FOR A STUDY OF LOCAL PUBLIC CAMPAIGN FINANCING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials,

wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.' The term 'contribution' does not include a grant from a governmental entity under a uniform program of grants to the campaigns of candidates for elective office within the jurisdiction of that governmental entity if: (i) the grants are available to any candidate for office who meets a set of criteria drawn by the government, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes. Grants pursuant to such a program are not subject to the contribution limitations of G.S. 163-278.13 and the prohibitions on corporate contributions of G.S. 163-278.15 or 163-278.19, but shall be reported as if they were contributions in all campaign reports required by law to be filed by the campaigns receiving the grants."

SECTION 2. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-499. Uniform, nondiscriminatory program of public financing of election campaigns.**

A governing body of a county with a population exceeding 50,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for county office in that county if: (i) the grants are available to any candidate for an office who meets a set of criteria drawn by the county, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes.

A governing body of a city with a population exceeding 30,000 according to the most recent decennial federal census may appropriate funds for a uniform program of grants to the campaigns of candidates for city office in that city if: (i) the grants are available to any candidate for an office who meets a set of criteria drawn by the city, (ii) the criteria are drawn to further the public purpose of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or nonincumbency, or party affiliation, and (iii) the grants are restricted to use for campaign purposes.

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 3. Article 21 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-500. Authority to set stricter political contribution limits and campaign reporting thresholds for local office.**

A governing body of a county may set contribution limits at a dollar amount lower than those provided in G.S. 163-278.13 with respect to elections for county offices in that county. A governing body of a county may set a lower dollar amount than set forth in G.S. 163-278.8 as a threshold for reporting the name, address, and principal occupation of a contributor, as those items are prescribed to be reported in G.S. 163-278.11, with respect to elections for county offices in that county.

A governing body of a city may set contribution limits at a dollar amount lower than those provided in G.S. 163-278.13 with respect to elections for city offices in that city. A governing body of a city may set a lower dollar amount than set forth in G.S. 163-278.8 as a threshold for reporting the name, address, and principal occupation of a contributor, as those items are prescribed to be reported in G.S. 163-278.11, with respect to elections for city offices in that city.

This section does not authorize a county or city to set a higher dollar amount than the general law in Chapter 163 of the General Statutes as either a contribution limit or a threshold for reporting. This section does not authorize a county or city to set a contribution limit lower than two hundred dollars ($200.00) for contribution from one source to one recipient per election. This section does not authorize a county or city to set a reporting threshold for a contributor at lower than twenty dollars ($20.00).

Any county or city exercising authority under this section shall report its action to the State Board of Elections and the county board of elections in any county in which it has territory."

SECTION 4. G.S. 153A-445 reads as rewritten:

"**§ 153A-445. Miscellaneous powers found in Chapter 160A.**

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. – Joint Exercise of Powers.

(2) Chapter 160A, Article 20, Part 2. – Regional Councils of Governments.

(3) G.S. 160A-487. – Financial support for rescue squads.

(4) G.S. 160A-488. – Art galleries and museums.

(5) G.S. 160A-492. – Human relations programs.

(6) G.S. 160A-497. – Senior citizens programs.

(7) G.S. 160A-489. – Auditoriums, coliseums, and convention and civic centers.

(8) G.S. 160A-498. – Railroad corridor preservation.

(9) G.S. 160A-499. – Uniform, nondiscriminatory program of public financing of election campaigns.

(10) G.S. 160A-500. – Authority to set stricter political contribution limits and campaign reporting thresholds for local office.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties."

SECTION 5. No later than 18 months after this act becomes effective, the State Board of Elections shall complete a study of a variety of public financing programs for local government elections in the United States, prepare a description of the basic elements generally present, and compile a collection of reference materials for local governments in North Carolina to use in designing their programs. There is appropriated from the General Fund to the State Board of Elections for the 2003-2004 fiscal year the sum of fifteen thousand dollars ($15,000) for this purpose.

SECTION 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — 7-10-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cowan	BPMHC
NELS ROSEGAND	NC DOJ
Jerry Richardson	SBI
Mike Budzynski	SBI
BILL WEIS	SBI
Robin Pendergraft	SBI
Gary McLeod	AG ofc.
Matt Osborne	AOC
Roger C. Thompson	Charlotte-Mecklenburg Police
Bob Hall	Democracy North Carolina
Peg Maymood	

VISITOR REGISTRATION SHEET

J-1 Comm. — 7-10-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carol Resar	NCGA
Lori Ann Harris	LAHA
Alan Stallings	Hunton & Williams
Mildred Spearman	NCDOCorrection
Ron Lawler	HHS
Steve McKinney	HHS
Joanne Stevens	NCCASA + nursing
EDDIE CALDWELL	NC Sheriffs Assn / NC Law Enf. Off. Assn.
PGP	NCAB
Ann Faucett	Alexander LA
Rick Zechini	NC Assoc. of Realtors

VISITOR REGISTRATION SHEET

J-1- Committee — 7-10-03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCATL
Beau Mills	NCLM
Dick Taylor	~~NCAA~~
Mike Caley	ASA & LMSA
Tom Caley	CWA CSO
Doris Weaver	NC CWA Political Council
Bernard Shaw	CNN
Pat A. Yancey	ACLU
John McMillan	NFDC
Michelle Frazier	NC Bar Ass'n
Bill Martin	ATT

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stan Wall	CCNC
VL McBride	~~NCFA~~
FRAN PRESTON	NCRMA
ANDY ELLEN	NCRMA
Gene Causby	NC SFSA
John Allen	NC Clearwater

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 15, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 281	Technical Corrections Act.	Representative Culpepper, III
HB 1114	School Volunteer Records are Confidential.	Representative Saunders

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

July 15, 2003 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:09 a.m. with twelve members present. He introduced Pages, Michelle Casper from Rocky Mount, NC, Claire Thomas from Greensboro, NC and Mary-Lindsay Noble from Lumberton, NC.

HB-281 (Technical Corrections Act.) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members votes yes. Motion carried. In the absence of bill sponsor, Representative William Culpepper, Senator Clodfelter asked Staff Attorney, Walker Reagan to explain the schedule of the bill. He then asked Ms. Bly Hall, Staff Attorney from the General Statutes Commission to explain changes. See attached Bill Summary. Senator's Wib Gulley, Ham Horton and Charlie Albertson had questions. Staff Attorney, Robin Johnson answered the questions and explained some of the changes Senator Clodfelter said the bill would be displaced and heard at the next meeting.

HB-1114 (School Volunteer Records are Confidential) Committee Substitute was introduced by Senator Clodfelter. Senator Wib Gulley moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff Attorney, Walker Reagan explained changes to the bill. Senator Phillip Berger offered an Amendment to the bill on page two, lines one through eight. See attached. All members voted in favor of the Amendment. Motion carried. Senator Bob Carpenter moved for a Favorable Report. All members voted yes. Motion carried.

HB-281 (Technical Corrections Act) was brought back before the Committee for discussion. Senator Ham Horton had a question on Section 36 and 39. Ms. Linda Suggs, Legislative Director State Board of Education and Mr. Mark Fleming, NC University System answered questions. Senator's Phillip Berger, Wib Gulley had questions on the bill. Senator Clodfelter said the answers would be provided at the next meeting. The bill was displaced at this time.

Being no further business the meeting adjourned at 11:00 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

CORRECTED REPORT

Tuesday, July 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1114** School Volunteer Records are Confidential.

Draft Number:	PCS 30415
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1114
PROPOSED SENATE COMMITTEE SUBSTITUTE H1114-PCS30415-RU-39

Short Title: School Volunteer Records Private. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE VOLUNTEER FILES MAINTAINED BY LOCAL BOARDS OF EDUCATION PRIVATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-209.1. Nondisclosure of certain volunteer records.**

(a) The records comprising a volunteer file of a local school administrative unit are not public records as provided in Chapter 132 of the General Statutes. These records shall be open for inspection only to the following individuals:

(1) The volunteer, former volunteer, individual who applied to be a volunteer, or that individual's properly authorized agent who may examine the individual's file in its entirety at any reasonable time.

(2) The superintendent and other supervisory personnel.

(3) The parent or guardian of any student with whom the volunteer has or had contact.

(4) Members of the local board of education and the board's attorney.

(5) A party to a lawsuit, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with that subpoena or court order.

(b) A local board of education shall also release or permit the inspection of a volunteer file, except as prohibited by State or federal law, if prior to the release of the information or inspection of the file:

(1) The local board of education determines that the release of the information or inspection of the file is essential (i) to maintaining the integrity of the local board of education or (ii) to maintaining the level or quality of services provided by the local board of education; or

(2) The local board of education makes a written finding that there is a substantial showing of the criteria set forth in subdivision (1) of this subsection. The local board of education's written finding shall be a public record.

(c) A volunteer shall be notified at the time the individual applies to volunteer that the local board of education may maintain a volunteer file on the individual, and that information in that file may be open to inspection in accordance with this section.

(d) This section shall not be construed to require a local school administrative unit to maintain records on volunteers, former volunteers, or individuals applying to be volunteers.

(e) As used in this section, the following terms mean:

(1) Volunteer. – An individual who provides services to a local board of education without expectation of compensation and with the understanding that the local board of education is under no obligation to continue accepting those services or to compensate the volunteer for them.

(2) Volunteer file. – Any information collected by the local board of education regarding volunteers, former volunteers, and individuals applying to be volunteers that relates to the individual's application, selection or nonselection, performance, disciplinary action, or termination, wherever that information is located or in whatever form it is maintained."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1114 DATE 7-15-03

S. B. No. _____ Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS - GSRV-39[v.5]

Rep.)
)
Sen.)

moves to amend the bill on page 2, lines 1-8

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINES TO READ:

"THE LOCAL BOARD OF EDUCATION [redacted] A MAKES WRITTEN FINDINGS THAT THERE IS A SUBSTANTIAL SHOWING OF THE CRITERIA SET FORTH IN SUBDIVISION (1) OF THIS SECTION. THE LOCAL BOARD OF EDUCATION'S WRITTEN FINDINGS SHALL BE A PUBLIC RECORD."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1114

Short Title:	School Volunteer Records Are Confidential.	(Public)
Sponsors:	Representative Saunders.	
Referred to:	Education.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE VOLUNTEER FILES MAINTAINED BY LOCAL BOARDS OF EDUCATION PRIVATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-209.1. Confidentiality of certain volunteer records.**

(a) All records of a local school administrative unit regarding volunteers, former volunteers, and persons applying to be volunteers are confidential and are not public records as provided in Chapter 132 of the General Statutes. These records shall be open for inspection only to the following persons:

(1) The volunteer, former volunteer, person who applied to be a volunteer, or that person's properly authorized agent who may examine the person's file in its entirety at any reasonable time;

(2) The superintendent and other supervisory personnel;

(3) The parent or guardian of any student with whom the volunteer has or had contact;

(4) Members of the local board of education and the board's attorney; and

(5) A party, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with that subpoena or court order.

(b) A local board of education may also release or permit the inspection of a volunteer file if, prior to the release of the information or inspection of the file, the local board of education:

(1) Determines that the release of the information or inspection of the file is essential (i) to maintaining the integrity of the local board of education or (ii) to maintaining the level or quality of services provided by the local board of education; and

(2) Prepares a memorandum setting forth the local board's reasons for releasing the records or permitting the inspection of the files. This memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) As used in this section, a volunteer is a person who provides services to a local board of education without expectation of compensation and with the understanding that the local board of education is under no obligation to continue accepting those services or to compensate the volunteer for them.

(d) This section shall not be construed to require a local school administrative unit to maintain records on volunteers, former volunteers, or persons applying to be volunteers, except where there is evidence of volunteer misconduct."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 281

Committee Substitute Favorable 4/23/03

Senate Judiciary I Committee Substitute Adopted 7/15/03

Short Title: Technical Corrections Act. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 14-402(c)(3) reads as rewritten:

"(c) The following definitions apply in this section:

...

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This ~~devise~~ device is mechanically held at full or partial draw and released by a trigger or similar mechanism ~~which~~ that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

..."

SECTION 2. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. – To obtain ~~a~~ an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period

of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's valid social security number.
(6) The applicant's signature.

If an applicant does not have a valid social security number and is ineligible to obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service to that person.

The Division shall not issue an identification card, learners permit, or drivers license to an applicant who fails to provide either the applicant's valid social security number or the applicant's valid Individual Taxpayer Identification Number."

SECTION 3. G.S. 49-13.1 is repealed.

SECTION 4. G.S. 55B-2(6), as amended by Section 3 of S.L. 2003-117, reads as rewritten:

"(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18C, "Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to ~~Certified~~ Licensed Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act."

SECTION 5.(a) G.S. 58-36-10(3) reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards shall apply to the making and use of rates:

...

(3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.

..."

SECTION 5.(b) G.S. 58-40-25(4) reads as rewritten:

"**§ 58-40-25. Rating methods.**

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

...

(4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply."

SECTION 5.(c) G.S. 58-87-1(b) reads as rewritten:

"(b) A fire department is eligible for a grant under this section if it meets all of the following conditions:

(1) It serves a response area of 6,000 or less in population.

(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.

(3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1) of this subsection, the Department shall use the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(d) G.S. 105-113.82(e) reads as rewritten:

"(e) Population Estimates. – To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(e) G.S. 105-129.3(b1) reads as rewritten:

"(b1) Data. – In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(f) G.S. 105-129.3A(a) reads as rewritten:

"(a) Development Zone Defined. – A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce."

SECTION 5.(g) G.S. 105-164.44F(b) reads as rewritten:

"(b) Share of Cities Incorporated on or After January 1, 2001. – The share of a city incorporated on or after January 1, 2001, is its per capita share of the amount to be distributed to all cities incorporated on or after this date. This amount is the proportion of the total to be distributed under this section that is the same as the proportion of the population of cities incorporated on or after January 1, 2001, compared to the population of all cities. In making the distribution under this subsection, the Secretary must use the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer."

SECTION 5.(h) G.S. 105-187.19(b) reads as rewritten:

"(b) Each quarter, the Secretary shall credit five percent (5%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty-seven percent (27%) of the net tax proceeds to the Scrap Tire Disposal Account. The Secretary shall distribute the remaining sixty-eight percent (68%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer."

SECTION 5.(i) G.S. 105-187.24 reads as rewritten:

"**§ 105-187.24. Use of tax proceeds.**

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

SECTION 5.(j) Effective July 1, 2003, G.S. 105-472(b) reads as rewritten:

"(b) Distribution Between Counties and Cities. – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State ~~Planning~~ Budget Officer.

(2) Ad Valorem Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly

distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year."

SECTION 5.(k) G.S. 136-202(c) reads as rewritten:

"(c) The Department, the metropolitan planning organizations, and the Department of Environment and Natural Resources shall jointly evaluate and adjust the regions defined in each regional travel demand model at least once every five years and no later than October 1 of the year following each decennial federal census. The evaluation and adjustment shall be based on decennial census data and the most recent populations estimates certified by the State ~~Planning~~ Budget Officer. The adjustment of these boundaries shall reflect current and projected patterns of population, employment, travel, congestion, commuting, and public transportation use and the effects of these patterns on air quality."

SECTION 5.(l) G.S. 143-215.107A(d) reads as rewritten:

"(d) Additional Counties. – The Commission may require that motor vehicle emissions inspections be performed in counties in addition to those set out in subsection (c) of this section. In determining whether to require that motor vehicle emissions inspections be performed in a county, the Commission may consider the population of, and distribution of population in, the county; the projected change in population of, and distribution of population in, the county; the number of vehicles registered in the county; the projected change in the number of vehicles registered in the county; vehicle miles traveled in the county; the projected change in vehicle miles traveled in the county; current and projected commuting patterns in the county; and the current and projected impact of these factors on attainment of air quality standards in the county and in areas outside the county. The Commission may not require that motor vehicle emissions inspections be performed in any county with a population of less than 40,000 based on the most recent population estimates prepared by the State ~~Planning~~ Budget

Officer. The Commission may not require that motor vehicle emissions inspections be performed in any county in which the number of vehicle miles traveled per day is less than 900,000, based on the most recent estimates prepared by the Department of Transportation. In order to disapprove a rule that requires that motor vehicle emissions inspections be performed in one or more additional counties, a bill introduced pursuant to G.S. 150B-21.3(b) must amend subsection (c) of this section to add one or more other counties in which the total population and vehicle miles traveled per day equal or exceed the total population and vehicle miles traveled in the county or counties listed in the rule that the bill would disapprove."

SECTION 5.(m) G.S. 160A-536(c) reads as rewritten:

"(c) Urban Area Revitalization Defined. – As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State ~~Planning~~ Budget Officer and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.

(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.

(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.

(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities."

SECTION 5.(n) G.S. 162A-6(a)(14d) reads as rewritten:

"(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority is authorized and empowered:

...

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the

authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

..."

SECTION 6. G.S. 78A-17 reads as rewritten:

"**§ 78A-17. Exempt transactions.**

Except as otherwise provided in this Chapter, the following transactions are exempted from G.S. 78A-24 and G.S. 78A-49(d):

(1) Any isolated nonissuer transaction, whether effected through a dealer or ~~not;~~not.

(2) Any nonissuer distribution other than by a controlling person of an outstanding security if

a. A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

b. A registered dealer files with the Administrator such information relating to the issuer as the Administrator may by rule or order require, or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the ~~security;~~security.

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy; but the Administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the dealer for a specified ~~period;~~period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among ~~underwriters;~~underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a lien or security interest in real or personal property, or by an agreement for the sale of real estate or chattels, if the entire security interest or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a ~~unit;~~unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or ~~conservator;~~conservator.

(7) Any transaction executed by a person holding a bona fide security interest without any purpose of evading this ~~Chapter;~~Chapter.

(8) Any offer or sale to an entity which has a net worth in excess of one million dollars ($1,000,000) as determined by generally accepted accounting principles, bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary ~~capacity;~~capacity.

(9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security transaction. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required.

(10) Any offer or sale of a preorganizational certificate or subscription if: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; (ii) no public advertising or solicitation is used in connection with the offer or sale; (iii) the number of subscribers does not exceed 10 and the number of offerees does not exceed 25; and (iv) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or (ii) the issuer first files a notice specifying the terms of the offer and the Administrator does not by

order disallow the exemption within the next 10 full business ~~days;~~days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this Chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either ~~act;~~act.

(13) Any offer or sale by a domestic entity of its own securities if (i) the entity was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (ii) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, (iii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iv) the ~~corporation~~ entity is both organized and operated principally to promote some community, industrial, or agricultural development that confers a public benefit rather than organized and operated principally to generate a pecuniary ~~profit;~~profit.

(14) Any offer, sale or issuance of securities pursuant to an employees' stock or equity purchase, option, savings, pension, profit-sharing, or other similar benefit plan that is exempt under the provisions of ~~G.S. 78A-16(11);~~G.S. 78A-16(11).

..."

SECTION 7. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.

(3) A crime involving fraud or moral turpitude by conviction thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.

(5) False or misleading advertising.

(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, ~~adopted~~ or the

standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation."

SECTION 8. G.S. 96-4(t)(2) reads as rewritten:

"(t) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government.

...

(2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Commission have agreed upon in writing. (ii) The Employment Service Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information Division shall collect, collate, and publish statistical and other information relating to the work under the Commission's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Commission's opinion may make further legislation desirable. (iv) Except as provided by Commission regulation, any information published pursuant to this ~~subsection (II)~~ subdivision shall not be published in any manner revealing the identity of the applicant or the employing unit.

..."

SECTION 9. G.S. 110-136.13(a) reads as rewritten:

"(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and ~~110-14,~~ 110-136.14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act."

SECTION 10. G.S. 143-129.8(b) reads as rewritten:

"(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with ~~G.S. 143-129(a).~~G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals."

SECTION 11. G.S. 147-69 reads as rewritten:

"**§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.**

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon ~~his~~ the Auditor's request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in ~~his~~ the Treasurer's office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which ~~he~~ the Treasurer may deposit or cause to be deposited any of the public funds, and ~~such~~ these accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing ~~his~~ the Treasurer's official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing ~~his~~ the Treasurer's signature to warrants, checks or any other instrument ~~he~~ the Treasurer is required by law to sign. The Commissioner of ~~Banks and~~ Banks, the bank examiners, and ~~the Commissioner of Banks and~~ the savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all ~~such~~ these depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for ~~such deposit.~~these deposits."

SECTION 12.(a) G.S. 163-278.39B is recodified as G.S. 163-278.38Z under Part 1A of Article 22A of Chapter 163 of the General Statutes, so that the recodified section appears as the first section in Part 1A.

SECTION 12.(b) G.S. 163-278.6 reads as rewritten:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of 'radio' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

...

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received

funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of 'candidate' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of 'print media,' 'radio,' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

...

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;
b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;
c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or
d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the

presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of 'political action committee' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of 'political party organization' that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

..."

SECTION 13.(a) Section 1 of S.L. 2001-37 is repealed.

SECTION 13.(b) S.L. 2001-37 is amended by adding a new section to read:

"**SECTION 1.1.** G.S. 160A-58.1(b)(5) does not apply to the Cities of Marion, Oxford, and Rockingham and the Towns of Calabash, Catawba, Dallas, Godwin, Louisburg, Mocksville, Pembroke, Rutherfordton, and Waynesville."

SECTION 13.(c) G.S. 160-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Hickory, Marion, Mount Airy, New Bern, Newton, Oxford, Rockingham, Sanford, Salisbury, Southport, and Statesville, and the Towns of Calabash, Catawba, Dallas, Godwin, Kenly, Louisburg, Maiden, Midland, Mocksville, Mooresville, Pembroke, Rutherfordton, Swansboro, ~~and Warsaw.~~ Warsaw, and Waynesville."

SECTION 13.(d) G.S. 160A-58.1(b1) is repealed.

PART II. OTHER CHANGES

SECTION 14. G.S. 1-44.2(b) reads as rewritten:

"(b) ~~Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership.~~ The presumption established by this section is rebuttable by showing that a party has good and valid title to the land."

SECTION 15.(a) G.S. 1-47(1) reads as rewritten:

"**§ 1-47. Ten years.**

Within ten years an action –

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its ~~rendition.~~ entry. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

..."

SECTION 15.(b) G.S. 1-52(8) reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action –

...

(8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the ~~rendition~~ entry of the judgment, or the issuing of the last execution thereon.

..."

SECTION 16. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. ~~Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in ~~§ 7A-32.~~G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 17. G.S. 7B-808(b), as enacted by Section 2 of S.L. 2003-140, reads as rewritten:

"(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation ~~of a juvenile~~ under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs."

SECTION 18. The catch line of G.S. 8-53.5 reads as rewritten:

"**§ 8-53.5. Communications between licensed marital and family therapist and client(s).**"

SECTION 19.(a) G.S. 14-202.4, as amended by Section 2 of S.L. 2003-98, reads as rewritten:

"**§ 14-202.4. Taking indecent liberties with a student.**

(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. ~~The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.~~ A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.

(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school."

SECTION 19.(b) This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SECTION 20. G.S. 14-298 reads as rewritten:

"**§ 14-298. Gaming tables, illegal punchboards, slot machines, and prohibited video game machines to be destroyed by police officers.**

All sheriffs and law enforcement officers ~~of police are hereby authorized and directed, on information made to them on oath~~ upon a determination that probable cause exists to believe that any gaming table prohibited to be used by G.S. 14-289 through G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine prohibited to be used by G.S. 14-306 or G.S. 14-306.1, is in the possession or use of any person within the limits of their jurisdiction, ~~to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction.~~are hereby authorized to seize the item in accordance with applicable State and federal law. Any law enforcement agency in possession of that item shall retain the item pending a disposition order from a district or superior court judge. Upon application by the law enforcement agency, district attorney, or owner, and after notice and opportunity to be heard by all parties, if the court determines that the item is unlawful to possess, it shall enter an order releasing the item to the law enforcement agency for destruction or for training purposes. If the court determines that the item is

not unlawful to possess and will not be used in violation of the law, the item shall be ordered released to its owner upon satisfactory proof of ownership. The foregoing procedures for release shall not apply, however, with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment."

SECTION 21. G.S. 14-401.5 is repealed.

SECTION 22. G.S. 15-190 reads as rewritten:

"**§ 15-190. Person or persons to be designated by warden to execute sentence; supervision of execution; who shall be present.**

Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in the warden's place, and the surgeon or physician of the penitentiary. Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or member of the clergy or religious leader of the person's choosing may be present if they so desire. The names of persons designated to carry out the execution shall be confidential and exempted under Chapter 132 of the General Statutes and are not subject to discovery or introduction as evidence in any proceeding. The Senior Resident Superior Court Judge for Wake County may compel disclosure of names made confidential by this section after making findings that support a conclusion that disclosure is necessary to a proper administration of justice."

SECTION 23. G.S. 18B-600(f), as amended by Section 1 of S.L. 2003-218, reads as rewritten:

"(f) Township Elections. — An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

~~(3) A county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than twenty percent (20%) of the total county population as of the most recent federal census.~~

An election may be called on any of the propositions listed in G.S. 18B-602(a), (d), and (h) in any township located within a county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than twenty percent (20%) of the total county population as of the most recent federal census. In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B-602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

For purposes of this subsection, the name and boundary of a township is as it is shown on the Redistricting Census 2000 TIGER Files with modifications made by the Legislative Services Office on its computer database as of May 1, 2001.

In any township election held under this subsection, the area within any incorporated municipality is excluded, and no permits may be issued under this subsection in any excluded area.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages."

SECTION 24. G.S. 18B-1006(j)(4) is repealed.

SECTION 25. G.S. 18B-1006(m) reads as rewritten:

"(m) Interstate Interchange Economic Development Zones. –

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

b. Operates ABC stores;

c. Borders on another state; and

d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

a. Located within one mile of any interstate highway interchange in that county.

b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).

~~(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:~~

~~a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.~~

~~b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.~~

~~c. Operates ABC stores.~~

~~d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.~~

~~This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection.~~"

SECTION 26. G.S. 30-3.6(c), as enacted by Section 5 of S.L. 2003-296, reads as rewritten:

"(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of ~~decedent's~~ decedents dying on or after January 1, 2001."

SECTION 27. G.S. 35A-1213(b) reads as rewritten:

"(b) ~~An individual appointed as general guardian or guardian of the estate must be a resident of the State of North Carolina.~~ A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the ~~person~~ person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by

and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk may require a nonresident guardian to post a bond or other security for the faithful performance of the guardian's duties."

SECTION 28.(a) G.S.40A-3(b) reads as rewritten:

"(b) ~~Local Public Condemnors.~~Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter."

SECTION 28.(b) G.S. 40A-3(b1), as amended by Section 1 of S.L. 2003-282, reads as rewritten:

"(b1) ~~Local Public Condemnors.~~Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island."

SECTION 29. G.S. 40A-42(a), as amended by Section 2 of S.L. 2003-282, reads as rewritten:

"(a) (1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

(2) Modified Provision for Certain Localities. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b1)(1), (4), (7), (10), or (11), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island."

SECTION 30.(a) G.S. 48-2-206(c) reads as rewritten:

"(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the ~~minor.~~minor or to participate in the adoption proceeding."

SECTION 30.(b) G.S. 48-2-206(d) reads as rewritten:

"(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

"To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding."

SECTION 30.(c) Part 2 of Article 2 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"**§ 48-2-207. Postpetition determination of necessity of consent.**

(a) If any individual described in G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.

(b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required for any of the following individuals:

(1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S.

48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.

(2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.

(c) If the court determines that the consent of any individual is required, the adoption cannot proceed until that individual's consent is obtained or that individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that the individual's consent is required does not entitle that individual to physical custody of the minor.

(d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, that individual is not entitled to receive notice of, or to participate in, further proceedings in the adoption."

SECTION 30.(d) G.S. 48-2-304(c) reads as rewritten:

"(c) A petition to adopt a minor under Article 3 of this Chapter shall also ~~state:~~state all of the following:

(1) A description of the source of placement and the date of placement of the adoptee with the ~~petitioner; and~~petitioner.

(2) That the provisions of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, were followed if the adoptee was brought into this State from another state for purposes of ~~adoption.~~adoption, or that a statement is attached describing the circumstances of any noncompliance."

SECTION 30.(e) G.S. 48-2-305(7) reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

...

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State.~~State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.

...

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 30.(f) G.S. 48-2-401(b) reads as rewritten:

"(b) In all adoptions, the petitioner shall serve notice of the filing ~~on:~~on each of the following:

(1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this ~~Chapter;~~Chapter.

(2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be ~~waived;~~waived, provided the court for cause may waive this notice requirement.

(3) Any individual who has executed a consent or relinquishment, but who the petitioner has actually been informed has filed an action to set it aside for fraud or ~~duress; and~~duress.

(4) Any other person designated by the court who can provide information relevant to the proposed adoption."

SECTION 30.(g) G.S. 48-2-401(c) reads as rewritten:

"(c) In the adoption of a minor, the petitioner shall also serve notice of the filing ~~on:~~on each of the following:

(1) A minor whose consent is dispensed with under ~~G.S. 48-3-603(b)(2);~~G.S. 48-3-603(b)(2).

(2) Any agency that placed the ~~adoptee;~~adoptee.

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, or a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent; and~~parent, or provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

(4) Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with the minor under an existing court order issued by a court in this State or another state."

SECTION 30.(h) G.S. 48-2-405 reads as rewritten:

"**§ 48-2-405. Rights of persons entitled to notice.**

~~A~~ Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee."

SECTION 31.(a) G.S. 54B-266(1) is repealed.

SECTION 31.(b) G.S. 54C-200(1) is repealed.

SECTION 32. G.S. 58-64-33(a), as amended by Section 8 of S.L. 2003-193, reads as rewritten:

"(a) A provider shall maintain after the opening of a facility: an operating reserve equal to fifty percent (50%) of the total operating costs of the facility forecasted for the 12-month period following the period covered by the most recent disclosure statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total

operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. If a facility maintains an occupancy level in excess of ninety percent (90%), a provider shall only be required to maintain a twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserve ~~must~~ may be funded by cash, by ~~cash equivalents,~~ invested cash, or by investment grade securities, including bonds, stocks, U.S. Treasury obligations, or obligations of U.S. government agencies."

SECTION 33.(a) G.S. 62-3(23) reads as rewritten:

"(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

...

i. The term "public utility" shall not include the State, the Office of ~~the State Controller,~~ Information Technology, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

...."

SECTION 33.(b) G.S. 147-33.92 reads as rewritten:

"**§ 147-33.92. Telecommunications services for local governmental ~~units~~ entities and other entities.**

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental ~~units~~ entities with access to a central telecommunications system or service established under G.S. 147-33.91 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State Chief Information Officer shall establish switched broadband telecommunications services and ~~permit~~permit, in addition to State agencies, cities, counties, and other local government ~~units,~~ entities, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.

(2) MCNC.

(3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.

(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, ~~47 U.S.C. § 153(h).~~ 47 U.S.C. § 153(10). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer."

SECTION 34. Article 4 of Chapter 72 of the General Statutes is repealed.

SECTION 35. G.S. 105-129.6(b) reads as rewritten:

"(b) Reports. – The Department of Revenue shall publish by ~~March 1~~April 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

..."

SECTION 36. G.S. 108A-70.21(d), as amended by Section 10.29(a) of S.L. 2003-284, reads as rewritten:

"(d) Cost-Sharing. – There shall be no deductibles, copayments, or other cost-sharing charges for families covered under the Program whose family income is at or below one hundred fifty percent (150%) of the federal poverty ~~level, except that fees for outpatient prescription drugs are applicable and shall be one dollar ($1.00) for each outpatient generic prescription drug and for each outpatient brand-name prescription drug for which there is no generic substitution available. The fee for each outpatient brand-name prescription drug for which there is a generic substitution available is three dollars ($3.00).~~ level. Families covered under the Program whose family income is above one hundred fifty percent (150%) of the federal poverty level shall be responsible for copayments to providers as follows:

(1) Five dollars ($5.00) per child for each visit to a provider, except that there shall be no copayment required for well-baby, well-child, or age-appropriate immunization services;

(2) Five dollars ($5.00) per child for each outpatient hospital visit;

(3) A six dollar ($6.00) fee for each outpatient prescription drug purchased; ~~one dollar ($1.00) fee for each outpatient generic prescription drug and for each outpatient brand-name prescription drug for which there is no generic substitution available. The fee for each outpatient brand-name prescription drug for which there is a generic substitution available is ten dollars ($10.00).~~

(4) Twenty dollars ($20.00) for each emergency room visit unless:

a. The child is admitted to the hospital, or

b. No other reasonable care was available as determined by the Claims Processing Contractor of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

Copayments required under this subsection for prescription drugs apply only to prescription drugs prescribed on an outpatient basis."

SECTION 37.(a) G.S. 110-90(1a), as enacted by Section 34.12(a) of S.L. 2003-284, reads as rewritten:

"The Secretary shall have the following powers and duties under the policies and rules of the Commission:

...

(1a) ~~To establish~~The Secretary shall charge child care centers a nonrefundable annual license-monitoring ~~fee for the licensing of child care centers.~~ fee. The fee does not apply to a religious-sponsored child care center operated pursuant to a letter of compliance. The amount of the fee ~~may not exceed~~shall be the amount listed in this subdivision.

Capacity of Center	**~~Maximum~~ Fee**
12 or fewer children	$ 35.00
13-50 children	$125.00
51-100 children	$250.00
101 or more children	$400.00

Failure to pay the license monitoring fee shall result in suspension of a license unless the fee is paid as governed by G.S. 150B-3.

..."

SECTION 37.(b) Section 5.1(p) of S.L. 2003-284, reads as rewritten:

"**SECTION 5.1.(p)** The sum of ~~one million six hundred thousand dollars ($1,600,000)~~two million five hundred fifty thousand dollars ($2,550,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for fiscal year 2003-2004 shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Support the Masters Degree in Social Work/Baccalaureate Degree in Social Work Collaborative.
(3) Provide training for residential child care facilities.
(4) Provide for various other child welfare training initiatives."

SECTION 37.(c) Section 5.1(a) of S.L. 2003-284 is amended by deleting the language 'Division of Social Services – Child Caring Agencies' in item 17 of the SOCIAL SERVICES BLOCK GRANT and substituting 'Transfer from TANF Block Grant for Division of Social Services – Child Caring Agencies' in item 17 of the SOCIAL SERVICES BLOCK GRANT.

SECTION 38. G.S. 110-139.2(b1), as enacted by Section 4 of S.L. 2003-288, reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a delinquent child

support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the delinquency. In order to be able to attach a lien on and levy an obligor's account, the obligor's child support obligation shall be in arrears in an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the arrears amount in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor and the financial institution a notice as provided by this subsection. The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil ~~Procedure and~~ Procedure, except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified arrears amount, information for the obligor on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor to contest the lien, within 10 days after the obligor is served with the notice, the obligor shall send written notice of the basis of the obligor's contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The lien may be contested only on the basis that the arrearage is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), or the obligor is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the delinquent obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State."

SECTION 39. G.S. 114-19.12, as enacted by Section 4 of S.L. 2003-214 is recodified as G.S. 114-19.14, to avoid a conflict with S.L. 2003-182.

SECTION 40. G.S. 115C-84.2(d) reads as rewritten:

"(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. Different opening and closing dates may be fixed for schools in the same administrative unit.

~~Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days.~~"

SECTION 41.(a) G.S. 115C-238.29B(a) reads as rewritten:

"(a) Any person, group of persons, or nonprofit ~~corporation~~ corporation, including a local board of education, seeking to establish a charter school may apply to establish a charter school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion."

SECTION 41.(b) G.S. 115C-238.29E reads as rewritten:

"**§ 115C-238.29E. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its ~~charter.~~charter or if the local board of education was the applicant for the charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the ~~application.~~application unless a local board of education applied for and was granted a charter for the conversion of an existing public school or for the creation of a new charter school. In such a case, a charter school shall be operated by the local board of education or by a board of directors appointed by the local board of education.

(c) A charter school shall operate under the written charter signed by the entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning ~~authority.~~authority unless the local board of education applied for and was granted the charter for the conversion of a public school or the creation of a new charter school. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian

organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit."

SECTION 41.(c) This section applies only to the Winston-Salem/Forsyth School System.

SECTION 42.(a) G.S. 115C-238.29D(d) reads as rewritten:

"(d) The State Board of Education may grant the initial charter for a period not to exceed ~~five~~ 10 years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed ~~five~~ 10 years each. The State Board of Education shall review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

It shall not be considered a material revision of a charter application and shall not require the prior approval of the State Board for a charter school to increase its enrollment during the charter school's second year of operation and annually thereafter (i) by up to ten percent (10%) of the school's previous year's enrollment or (ii) in accordance with planned growth as authorized in the charter. Other enrollment growth shall be considered a material revision of the charter application, and the State Board may approve such additional enrollment growth of greater than ten percent (10%) only if the State Board finds that:

(1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment;

(2) The charter school has commitments for ninety percent (90%) of the requested maximum growth;

(3) The board of education of the local school administrative unit in which the charter school is located has had an opportunity to be heard by the State Board of Education on any adverse impact the proposed growth would have on the unit's ability to provide a sound basic education to its students;

(4) The charter school is not currently identified as low-performing;
(5) The charter school meets generally accepted standards of fiscal management; and
(6) It is otherwise appropriate to approve the enrollment growth."

SECTION 42.(b) G.S. 115C-238.29F(e)(1) reads as rewritten:

"(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. All teachers in grades six through 12 who are teaching in the core subject areas of mathematics, science, social studies, and language arts shall be college graduates.

The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees."

SECTION 42.(c) This section is effective when it becomes law. Subsection (a) of this section applies to charters granted or renewed on or after that date. Subsection (b) of this section applies to persons employed by charter schools for the 2003-2004 and subsequent school years.

SECTION 43. G.S. 115C-437 reads as rewritten:

"**§ 115C-437. Allocation of revenues to the local school administrative unit by the county.**

(a) Revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7, of the Constitution and taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511 shall be remitted to the school finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, Sec. 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount ~~collected.~~ collected, except as provided in subsection (b) of this section.

Revenues appropriated to the local school administrative unit by the board of county commissioners from general county revenues shall be made available to the school finance officer by such procedures as may be mutually agreeable to the board of education and the board of county commissioners, but if no such agreement is reached, these funds shall be remitted to the school finance officer by the county finance officer in monthly installments sufficient to meet its lawful expenditures from the county

appropriation until the county appropriation to the local school administrative unit is exhausted. Each installment shall be paid not later than 10 days after the close of each calendar month. When revenue has been appropriated to the local school administrative unit by the board of county commissioners from funds which carry specific restrictions binding upon the county as recipient, the board of commissioners must inform the local school administrative unit in writing of those restrictions.

(b) The clear proceeds of all penalties, forfeitures, and fines of The University of North Carolina shall be the full amount collected by The University of North Carolina, diminished only by the direct, actual costs of assessing and collecting the penalties, forfeitures, and fines. Those costs shall be itemized in an accounting to be provided when the proceeds are remitted by The University of North Carolina."

SECTION 44. Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding the following new section to read:

"**§ 116-40.7 Internal auditors.**

(a) Internal auditors within The University of North Carolina and its constituent institutions shall provide independent reviews and analyses of various functions and programs within The University of North Carolina that will provide management information to promote accountability, integrity, and efficiency within The University of North Carolina.

(b) An internal auditor shall have access to any records, data, or other information of The University of North Carolina or the relevant constituent institution that the internal auditor believes necessary to carry out the internal auditor's duties.

(c) An internal auditor shall maintain, for 10 years, a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the internal auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of that auditor's office shall be retained in accordance with Chapter 132 of the General Statutes. To promote cooperation and avoid unnecessary duplication of audit effort, audit work papers related to issued audit reports shall be, unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal governments in connection with some matter officially before them. Except as otherwise provided in this subsection, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential and shall not be open to examination or inspection under G.S. 132-6. Audit reports shall be public records to the extent that they do not include information that, under State laws, is confidential and exempt from Chapter 132 of the General Statutes or would compromise the security systems of The University of North Carolina."

SECTION 45. G.S. 116-238.1, as enacted by S.L. 2003-284, is amended by adding a new subsection to read:

"(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of tuition of the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of tuition at the constituent institution for which the tuition grant is awarded, then the

amount of the tuition grant shall be reduced by an appropriate amount determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of tuition received by the student, including the tuition grant under this section, shall not exceed the cost of tuition for the constituent institution at which the student is enrolled."

SECTION 46. G.S. 116-243, as rewritten by Section 1 of S.L. 2003-102, reads as rewritten:

"§ 116-243. Board of directors established; appointments.

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year ~~terms;~~terms.

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year ~~terms;~~terms.

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year ~~terms;~~terms.

(4) The President of The University of North Carolina or ~~his~~ the President's designee to serve ex ~~officio;~~officio.

(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex ~~officio;~~officio.

(6) The President of Western North Carolina Arboretum, Inc., to serve ex ~~officio;~~officio.

(7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden ~~clubs;~~clubs.

(8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least one year. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments

made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors."

SECTION 47.(a) The title of Article 6 of Chapter 120 of the General Statutes reads as rewritten:

"Article 6.

~~Acts and Journals.~~Acts, Journals, and Reports to the General Assembly."

SECTION 47.(b) Article 6 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-29.5. State agency reports to the General Assembly.**

Whenever a report is directed by law or resolution to be made to the General Assembly, the State agency preparing the report shall deliver one copy of the report to each of the following officers: the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the House Principal Clerk, and the Senate Principal Clerk; and two copies of the report to the Legislative Library. The State agency is encouraged to inform members of the General Assembly that an electronic copy is available. This section does not affect any responsibilities for depositing documents with the State Library or the State Publications Clearinghouse under Chapter 125 of the General Statutes."

SECTION 47.(c) This section becomes effective October 1, 2003.

SECTION 48.(a) G.S. 120-47.2(d) reads as rewritten:

"(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the ~~State~~ Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses."

SECTION 48.(b) G.S. 143-47.7(a) reads as rewritten:

"(a) Within 60 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of such appointment with the Governor, the Secretary of State, the ~~State~~ Legislative Library, the State Library, and the State Controller. For the purposes of this section, a copy of the letter from the appointing authority or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if such copy contains the information required in subsection (b) of this section."

SECTION 48.(c) G.S. 147-16.2 reads as rewritten:

"**§ 147-16.2. Duration of boards and councils created by executive officials; extensions.**

(a) Any executive order of the Governor that creates a board, committee, council, or commission expires two years after the effective date of the executive order, unless the Governor specifies an expiration date in the order; provided, however, that any such executive order that was in effect on July 1, 1983, expires on June 30, 1985, unless the Governor specified a different expiration date in any such order. The Governor may

extend any such executive order before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the Governor with the Secretary of State and the ~~State~~ Legislative Library.

(b) Any other State board, committee, council, or commission created by the Governor or by any other State elective officer specified in Article III of the North Carolina Constitution expires two years after it was created; provided, however, that any such board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The elective officer creating any such board, committee, council, or commission may extend the board, committee, council, or commission before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the elective officer with the Secretary of State and the ~~State~~ Legislative Library.

(c) Any State board, committee, council, or commission created by any official in the executive branch of State government, other than by those officials specified in subsections (a) and ~~(b),~~ (b) of this section, expires two years after it was created; provided, however, that any board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The Governor may extend any such board, committee, council, or commission before it expires for additional periods of up to two years by executive order; copies of the executive order shall be filed by the Governor with the Secretary of State and the ~~State~~ Legislative Library.

The words, "official in the executive branch of State government," as used in this section, do not include officials of counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivision, or local boards of education, other local public districts, units or bodies of any kind, or community colleges as defined in G.S. 115D- 2(2), or private corporations created by act of the General Assembly.

(d) Any elective officer specified in subsection (b) of this section and any other official in the executive branch of State government who creates a board, committee, council, or commission shall do so in writing and shall file copies of the writing with the Secretary of State and the ~~State~~ Legislative Library."

SECTION 49. G.S. 121-4(16) is repealed.

SECTION 50.(a) G.S. 131E-155 reads as rewritten:

"**§ 131E-155. Definitions.**

As used in this Article, unless otherwise specified:

...

(7) "Emergency medical services personnel" means all the personnel defined in subdivisions (5), (7a), (8), (9), (10), (11), (12), (13), (14), and (15) of this section.

(7a) "Emergency medical services instructor" means an individual who has completed educational requirements approved by the Department and has been credentialed as an emergency medical services instructor by the Department.

(8) "Emergency medical services-nurse practitioner" means a registered nurse who is licensed to practice nursing in North Carolina and approved to perform medical acts by the North Carolina Medical Board and the North Carolina Board of Nursing and credentialed by the Office of Emergency Medical Services to issue instructions to ~~ALS professionals~~ EMS personnel in accordance with protocols approved by the ~~sponsor hospital~~ EMS system and under the direction of the medical director.

(9) "Emergency medical services-physician assistant" means a physician assistant who has been licensed by the North Carolina Medical Board and approved by the Office of Emergency Medical Services to issue instructions to ~~ALS professionals~~ EMS personnel in accordance with protocols approved by the ~~sponsor hospital~~ EMS system and under the direction of the medical director.

...

(16a) "Emergency Medical Services Peer Review Committee" means a panel composed of EMS program representatives to be responsible for analyzing patient care data and outcome measures to evaluate the ongoing quality of patient care, system performance, and medical direction within the EMS system. The committee membership shall include, but not be limited to, physicians, nurses, EMS personnel, medical facility personnel, and county government officials. Review of medical records by the EMS Peer Review Committee is confidential and protected under G.S. 143-518.

..."

SECTION 50.(b) G.S. 131E-159 reads as rewritten:

"**§ 131E-159. Credentialing requirements.**

(a) ~~An individual seeking credentials as an emergency medical technician, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, mobile intensive care nurse, emergency medical services-physician assistant, or emergency medical services-nurse practitioner medical responder~~ Individuals seeking credentials as EMS personnel shall apply to the Department using forms prescribed by that agency. The Department's representatives shall examine the applicant by either written, practical, or written and practical examination. The Department shall issue appropriate credentials to the applicant who meets all the requirements set forth in this Article and the rules adopted for this Article and who successfully completes the examinations required for credentialing. ~~Emergency medical technician, medical responder, emergency medical dispatcher, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, mobile intensive care nurse, emergency medical services-physician assistant, and emergency medical services-nurse practitioner~~ EMS personnel credentials shall be valid for a period not to exceed four years and may be renewed if the holder meets the requirements set forth in the rules of the Commission. The Department is authorized to revoke or suspend these

credentials at any time it determines that the holder no longer meets the qualifications prescribed.

(b) The Commission shall adopt rules setting forth the qualifications required for credentialing of ~~medical responders, emergency medical technicians, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, emergency medical dispatcher, mobile intensive care nurse, emergency medical services physician assistant, and emergency medical services nurse practitioner.~~EMS personnel.

(c) ~~An individual currently credentialed as an emergency medical technician, emergency medical technician-defibrillation, emergency medical technician-intermediate, and emergency medical technician-paramedic~~ EMS personnel currently credentialed by the National Registry of Emergency Medical Technicians or by another state where the education/credentialing requirements have been approved for legal recognition by the Department of Health and Human Services, in accordance with rules promulgated by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with a permitted EMS provider offering service within North Carolina, may be eligible for credentialing as an emergency medical technician without examination. This credentialing shall be valid for a period not to exceed the length of the ~~emergency medical technician-defibrillation, emergency medical technician-intermediate, and emergency medical technician-paramedic~~ applicant's original credentialing or four years, whichever is less.

(d) An individual currently credentialed as an emergency medical dispatcher by a national credentialing agency, or by another state where the education/credentialing requirements have been approved for legal recognition by the Department of Health and Human Services, in accordance with rules issued by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with an emergency medical dispatcher program approved by the Department of Health and Human Services offering service within North Carolina, may be eligible for credentialing as an emergency medical dispatcher without examination. This credentialing shall be valid for a period not to exceed the length of the applicant's original credentialing or four years, whichever is less.

(e) Duly authorized representatives of the Department may issue temporary credentials with or without examination upon finding that this action will be in the public interest. Temporary credentials shall be valid for a period not exceeding 90 days.

(f) The Department may deny, suspend, amend, or revoke the credentials of ~~a medical responder, emergency medical technician, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, emergency medical dispatcher, emergency medical services physician assistant, emergency medical services nurse practitioner, or mobile intensive care nurse~~ EMS personnel in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules issued under this Article. Prior to implementation of any of the above disciplinary actions, the Department shall consider the recommendations of the EMS Disciplinary Committee pursuant to G.S. 143-519. The Department's decision to deny, suspend,

amend, or revoke credentials may be appealed by the applicant or credentialed personnel pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 50.(c) G.S. 131E-162 reads as rewritten:

"**§ 131E-162. Statewide trauma system.**

The Department shall establish and maintain a program for the development of a statewide trauma system. The Department shall consolidate all State functions relating to trauma systems, both regulatory and developmental, under the auspices of this program.

The Commission shall adopt rules to carry out the purpose of this Article. These rules shall be adopted with the advice of the State Emergency Medical Services Advisory Council and shall include the operation of a statewide trauma registry, statewide educational requirements fundamental to the implementation of the trauma system. The rules adopted by the Commission shall establish guidelines for monitoring and evaluating the system including standards and criteria for the denial, suspension, voluntary withdrawal, or revocation of credentials for trauma center ~~designation.~~ designation, and the establishment of regional trauma peer review committees. Each regional trauma peer review committee shall be responsible for analyzing trauma patient care data and outcome measures to evaluate the ongoing quality of patient care, system performance, and medical direction within the regional trauma system. The committee membership shall include physicians, nurses, EMS personnel, trauma registrars, and hospital administrators. Review of medical records by the Trauma Peer Review Committee is confidential and protected under G.S. 143-518. The rules adopted by the Commission shall avoid duplication of reporting and minimize the cost to hospitals or other persons reporting under this act. The Office of Emergency Medical Services shall be the agency responsible for monitoring system development, ensuring compliance with rules, and overseeing system effectiveness.

With respect to collection of data and educational requirements regarding trauma, rules adopted by the Medical Care Commission shall limit the authority of the Department to hospitals and Emergency Medical Services providers. Nothing in this Article shall be interpreted so as to grant the Department authority to require private physicians, schools, or universities, except those participating in the trauma system, to provide information or data or to conduct educational programs regarding trauma."

SECTION 50.(d) G.S. 143-508 is amended by adding the following subdivision to read:

"(13) Establish occupational standards for EMS systems, EMS educational institutions, and specialty care transport programs."

SECTION 50.(e) G.S. 143-509(9) reads as rewritten:

"**§ 143-509. Powers and duties of Secretary.**

The Secretary of the Department of Health and Human Services has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall accomplish all of the following:

...

(9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to ~~insect stings.~~ agents that might cause anaphylaxis. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Care Commission to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical services training program.

..."

SECTION 50.(f) G.S. 143-518(a)(5) reads as rewritten:

"(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 131E-155, 122C-30, or 131D-21.1."

SECTION 51.(a) G.S. 135-3(8)c. reads as rewritten:

"c. **(Effective until June 30, 2004 – See note)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity, except as a substitute teacher or a part-time tutor, with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a substitute, interim, or permanent basis in a public ~~school.~~school or a

charter school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit or a charter school under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 51.(b) G.S. 115C-325(a)(5a) reads as rewritten:

"(5a) **(Effective until June 30, 2004)** "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any capacity, other than as a substitute teacher or a part-time tutor, with a local board of education or a charter school for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of ~~education,~~education or the charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers."

SECTION 51.(c) This section expires June 30, 2004.

SECTION 52. G.S. 135-40.8(e), as enacted in Section 30.19C.(b) of S.L. 2003-284, reads as rewritten:

"(e) Where qualified out-of-state preferred providers of medical care are not reasonably available in medical emergencies, the Plan pays the amounts covered by subsection (a) of this section. Any amount of charges for services under this section that exceeds the amount allowed by the Plan for the services of qualified preferred providers under this section shall be negotiated between the Plan and the provider of medical services, and the Plan shall ensure that the Plan member is not held financially responsible for the amount of these excess charges. ~~If a Plan member is not capable of making a decision about choosing an in-State qualified preferred provider and emergency services personnel transport the Plan member to a provider outside of the Plan network, then the coverage under this subsection shall apply.~~ This subsection also shall apply if a Plan member has a medical emergency, is not capable of making a decision about choosing an in-State qualified preferred provider, and emergency services personnel transport the Plan member to a provider outside of the Plan network. As used in this section, a 'medical emergency' is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence

of immediate medical care, could imminently result in injury or danger to self or others."

SECTION 53. G.S. 136-179, as amended by Section 29.11(b) of S.L. 2003-284, reads as rewritten:

"**§ 136-179. Projects of Intrastate System funded from Trust Fund.**

Funds allocated from the Trust Fund for the Intrastate System may be used only for the following projects of the Intrastate System:

...

US-74	Complete 4-laning from I-26 to I-85 (including Shelby Bypass)	Polk, ~~Rutherford~~Rutherford, Cleveland

..."

SECTION 54. G.S. 136-180(a), as amended by Section 29.11(a) of S.L. 2003-284, reads as rewritten:

"(a) Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
...		
Greensboro Loop	Multilane facility on new location encircling City of Greensboro including interchanges with Cone Boulevard Extension and ~~Lewis-Fleming~~ Lewiston-Fleming Road Extension	Guilford

..."

SECTION 55.(a) G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

...

(2) Base years. – The first ~~two complete calendar years~~ 24 months following the effective date of an agreement.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State. A 'business' may be a division or smaller operating unit of a business organization if the Committee makes an explicit finding that this designation is necessary to secure the project and develops terms in a Community Economic Development Agreement to ensure that positions or employees of the business or of

a related entity that exist in the State and that are not part of the project are not transferred or shifted to create or fill eligible positions.

..."

SECTION 55.(b) G.S. 143B-437.54(d) reads as rewritten:

"~~(d) Public Notice. – The Committee shall do all of the following at least 15 business days prior to the adoption of or amendment to any proposed criteria:~~

~~(1) Publish the proposed criteria on the Department of Commerce's web site.~~

~~(2) Provide notice to persons who have requested notice of proposed criteria.~~

~~(3) Accept oral and written comments on the proposed criteria.~~

(d) Public Notice. – At least 20 business days before the effective date of any criteria or nontechnical amendments to criteria, the Committee must publish the proposed criteria on the Department of Commerce's web site and provide notice to persons who have requested notice of proposed criteria. In addition, the Committee must accept oral and written comments on the proposed criteria during the 15 business days beginning on the first day that the Committee has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

SECTION 56. G.S. 147-33.89, as enacted by S.L. 2003-172, is recodified as G.S. 147-33.90, to avoid a conflict with S.L. 2003-153.

SECTION 57.(a) G.S. 148-22.2, as rewritten by Section 8 of S.L. 2003-13, reads as rewritten:

"**§ 148-22.2. Procedure when surgical operations on inmates are necessary.**

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform an operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of the institution. No operation shall be performed without the consent of the inmate; or, if the inmate is a minor, without the consent of a responsible member of the inmate's family, a guardian, or one having legal custody of the minor; or, if the inmate be non compos mentis, then the consent of a responsible member of the inmate's family or of a guardian shall be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General ~~Statutes and~~ Statutes, ~~G.S. 90-21.13~~G.S. 90-21.13, and ~~G.S. 90-21.14.~~G.S. 90-21.16.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate

non compos mentis, the consent of a responsible member of the inmate's family, guardian, or one having legal custody of the inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this ~~Article,~~ section, the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for the operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed."

SECTION 57.(b) G.S. 148-46.2 reads as rewritten:

"**§ 148-46.2. Procedure when consent is refused by prisoner.**

When the Secretary of Correction finds as a fact that the injury to any prisoner was willfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the chief medical officer of the prison hospital or prison institution shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this ~~Article,~~ section, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. Any treatment of self-inflicted injuries shall also be subject to the provisions of G.S. 90-21.13 and ~~90-21.14.~~G.S. 90-21.16."

SECTION 58. G.S. 148-32.1(a) reads as rewritten:

"(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those inmates committed to the custody of the local confinement facility to serve criminal sentences of 30 days or more. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to an inmate as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the inmate is incarcerated, provided the inmate was using the eyeglasses or devices

at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

In order to obtain reimbursement for any of the expenses authorized by this section, a local confinement facility shall submit an invoice to the Department within one year of the date of commitment by the sentencing court."

SECTION 59.(a) G.S. 150B-21.1(a), as amended by Section 2 of S.L. 2003-229, reads as rewritten:

"(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
a. In accordance with the provisions of G.S. 163-22.2.
b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:
a. Repealed by Session Laws 2000, ch. 148, s. 5, effective July 1, 2002.
b. Repealed by Session Laws 2000, ch. 69, s. 5, effective July 1, 2003.

(13) The need for the Secretary of Transportation to adopt temporary rules concerning the permitted height of mobile and modular homes.

(14) The need for the Secretary of Transportation to adopt temporary rules pursuant to G.S. 113A-11(b) to establish a class of minimum criteria projects.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

(a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of this subsection means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency."

SECTION 59.(b) G.S. 150B-21.1(a1), as enacted by Section 2 of S.L. 2003-229, reads as rewritten:

"~~(a1)~~(a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. The statement must be signed by the head of the agency adopting the temporary rule."

SECTION 59.(c) G.S. 150B-21.1A(a), as enacted by Section 3 of S.L. 2003-229, reads as rewritten:

"(a) Adoption. – An agency may adopt an emergency rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety. When an agency adopts an emergency rule, it must simultaneously commence the process for adopting a temporary rule by submitting the rule to the Codifier of Rules for publication on the Internet in accordance with ~~G.S. 150B-21.1(a1).~~ G.S. 150B-21.1(a2). The Department of Health and Human Services or the appropriate rule-making agency within the Department may adopt emergency rules in accordance with this section when a recent act of the General Assembly or the United States Congress or a recent change in federal regulations authorizes new or increased services or benefits for children and families and the emergency rule is necessary to implement the change in State or federal law."

SECTION 59.(d) G.S. 150B-21.12(c), as amended by Section 10 of S.L. 2003-229, reads as rewritten:

"(c) Changes. – When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in ~~G.S. 150B-21.1(a1)~~ G.S. 150B-21.1(a2) and G.S. 150B-21.1(b)."

SECTION 59.(e) Section 14 of S.L. 2003-229 reads as rewritten:

"**SECTION 14.** Nothing in this act shall be construed to limit or repeal any specific grant of temporary rule-making authority to an agency enacted by the General Assembly prior to the effective date of this act. Any temporary rule adopted after the effective date of this act shall be adopted in accordance with the procedure set forth in G.S. 150B-21.1 as amended by this act."

SECTION 60.(a) In order to reflect the rewrite of G.S. 150B-21.1 by S.L. 2003-229, effective July 1, 2003, G.S. 150B-21.1(a11), as enacted by Section 3 of S.L. 2003-184, is recodified as G.S. 150B-21.1(a)(16) and reads as rewritten:

"(16) ~~Notwithstanding the provisions of subsection (a) of this section, the~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Department shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.~~

~~(2) Accept oral and written comments on the proposed temporary rule.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~"

SECTION 60.(b) This section does not affect the July 1, 2005, expiration of Section 3 of S.L. 2003-184.

SECTION 61.(a) Since G.S. 150B-21.1(a8) expired prior to the effective date of S.L. 2003-229, the Revisor of Statutes shall give no effect to the recodification and amendment of that statute.

SECTION 61.(b) Since G.S. 150B-21.1(a9) expired prior to the effective date of S.L. 2003-229, the Revisor of Statutes shall give no effect to the recodification and amendment of that statute.

SECTION 62.(a) Chapter 152 of the General Statutes is not applicable to Johnston County.

SECTION 62.(b) This section becomes effective upon the expiration of the term of the current coroner in Johnston County.

SECTION 63. G.S. 160A-176.2 reads as rewritten:

"**§ 160A-176.2. Ordinances effective in Atlantic Ocean.**

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Calabash, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle

Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only."

SECTION 64. G.S. 163-34 reads as rewritten:

"**§ 163-34. Power of county board of elections to maintain order.**

Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff ~~or constable~~ to whom the same shall be delivered, or if a sheriff ~~or constable~~ shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment."

SECTION 65. G.S. 163-35(b) reads as rewritten:

"(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive

Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered ~~by the State Board of Elections,~~ after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered ~~by the Board~~ after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of ~~Elections.~~ Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. ~~The State Board of Elections shall notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings.~~ Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection. ~~For the purposes of this subsection, the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.~~"

SECTION 66. G.S. 163-166.12, as enacted in Session Law 2003-226, is amended by adding a new subsection to read:

"(b1) For purposes of this section, if a voter registration applicant, as permitted in G.S. 163-82.6, delegates transporting the application form to another person, the county board of elections shall treat that form as being submitted in the manner it is submitted by the person who accepted the delegation."

SECTION 67.(a) G.S. 163-278.7(b)(7) reads as rewritten:

"(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

...

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

..."

SECTION 67.(b) This section is effective on and after January 1, 2003.

SECTION 68. G.S. 163-278.12A is repealed.

SECTION 69. G.S. 163-278.64(d)(5) reads as rewritten:

"(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act and rules adopted pursuant to it, and similar provisions in other states."

SECTION 70. G.S. 168-2 reads as rewritten:

"**§ 168-2. Right of access to and use of public places.**

Handicapped persons have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication

available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of ~~Economic and Community Development~~ Commerce shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services."

SECTION 71.(a) G.S. 168-4.2 reads as rewritten:

"**§ 168-4.2. May be accompanied by ~~assistance dog.~~service animal.**

Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, ~~or~~ hearing impaired person, as defined in G.S. 8B-1(2), or person with a seizure disorder has the right to be accompanied by ~~an assistance dog~~ a service animal especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168-3, and has the right to keep the ~~assistance dog~~ service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, ~~pursuant to~~ under G.S. 168-4.3, stamped "NORTH CAROLINA ~~ASSISTANCE DOG~~ SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the ~~dog~~ animal is being trained or has been trained as ~~an assistance dog. An assistance dog~~ a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3 but may not occupy a seat in any of these places. The ~~trainer of the assistance dog may be accompanied by the dog~~ service animal may accompany that animal's trainer during training sessions in any of the places listed in G.S. 168-3.

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function."

SECTION 71.(b) G.S. 168-4.3 reads as rewritten:

"**§ 168-4.3. Training and registration of ~~assistance dog.~~service animal.**

The Department of Health and Human Services, shall adopt rules for the registration of ~~assistance dogs~~ service animals and shall issue registrations to a visually impaired person, a hearing impaired person, ~~or~~ a mobility impaired ~~person~~ person, or a person with a seizure disorder who makes application for registration of ~~a dog~~ an animal that serves as ~~an assistance dog.~~ a service animal. The rules adopted regarding registration shall require that the ~~dog~~ animal be trained as ~~an assistance dog~~ a service animal by an appropriate agency, and that the certification and registration be permanent for the particular ~~dog~~ animal and need not be renewed while that particular ~~dog~~ animal serves the person applying for registration as ~~an assistance dog.~~ a service animal. No fee may be charged the person for the application, registration, tag, or replacement in the event

the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities."

SECTION 71.(c) G.S. 168-4.4 reads as rewritten:

"**§ 168-4.4. Responsibility for ~~assistance dog.~~service animal.**

The visually impaired person, hearing impaired person, ~~or~~ mobility impaired ~~person~~ person, or person with a seizure disorder who is accompanied by ~~an assistance dog~~ a service animal may not be required to pay any extra compensation for the ~~dog.~~ animal. The person has all the responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any ~~dog,~~ animal, including liability for any damage done by the ~~dog.~~animal."

SECTION 72.(a) Section 9.2 of Chapter 707 of the 1963 Session Laws, as amended by S.L. 2002-66, reads as rewritten:

"Sec. 9.2. Beginning with the 2003-2004 fiscal year, the base amount of funding for current expense expenditures from local funds shall include the previous ~~years'~~ year's level of current expense expenditures (for example, eight million seven hundred thousand dollars ($8,700,000) in 2002-2003), multiplied by one plus the average percentage change in local current expense school expenditures for the two most recent available fiscal ~~year~~ years for low-wealth counties in North Carolina (all local expenditures shall include local current expense expenditures incurred by charter schools within the appropriate districts), as determined by the Superintendent of Public Instruction or that person's designee. The average percentage change shall be calculated by (i) adding together for each of the two previous fiscal years the total current local expense expenditures for all low-wealth counties, (ii) dividing each of those totals, respectively, by the number of low-wealth counties receiving low wealth funding in each year to obtain an average low-wealth county local current expense expenditure for each year, and (iii) comparing the two averages. The average percentage change shall equal the percent difference between the averages for the two years.) The resulting product shall then be multiplied by a ratio consisting of the Average Daily Membership used to distribute State funding for the succeeding fiscal year as provided by the Department of Public Instruction, divided by the Average Daily Membership used to distribute funding for the current fiscal year, as determined by the Superintendent of Public Instruction, or that person's designee. ~~The resulting number shall be added to or subtracted from the previous year's amount of current expense expenditures from local funds. This sum~~ The resulting product shall be the required level of current expense funding to be appropriated by the Board of Commissioners from any local sources, including both general and supplemental tax revenues, and not including fines and forfeitures or restricted use sales taxes authorized by Article 40 or 42 of Chapter 105 of the General Statutes."

SECTION 72.(b) The remainder of Chapter 707 of the 1963 Session Laws is not changed by this section except to the extent any previously enacted provisions for the establishment and funding of current expense expenditures are inconsistent with the provisions of this section.

SECTION 73.(a) Section 6(a) of Chapter 246, Session Laws of 1991, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, reads as rewritten:

"Sec. 6. Orange County Civil Rights Ordinance. (a) The Board of Commissioners of Orange (hereafter 'Board of Commissioners') may adopt an ordinance (hereafter 'the Ordinance') to prohibit discrimination in ~~employment, housing,~~ housing and public accommodations on the basis of race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

The Board of Commissioners may include in the Ordinance a prohibition of language or conduct or both directed at an individual or at a group of individuals because of that individual's or group of individuals' actual or perceived race, color, religion, gender, national origin, age, disability, marital status, familial status, or veteran status which communicates in a threatening manner words that incite imminent lawless action or which tend to incite an immediate breach of the peace."

SECTION 73.(b) Section 6(b)(9) of Chapter 246, Session Laws of 1991, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, reads as rewritten:

"(b) The Board of Commissioners may, in the Ordinance, adopt procedures and delegate powers to the Orange County Human Relations Commission (hereafter 'the Commission') which are necessary and proper for carrying out and enforcing the Ordinance. To assist in the enforcement of the Ordinance, the Commission has, but is not limited to, the following powers:

...

(9) Making application, in its discretion, to the Office of Administrative Hearings for the designation of an administrative law judge to preside over a hearing in cases involving allegedly unlawful ~~employment practices, public accommodations,~~ public accommodations or other conduct made unlawful by subsection (a) of this section after conciliation efforts have failed; and

..."

SECTION 73.(c) Section 6(d) of Chapter 246, Session Laws of 1991, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, reads as rewritten:

"(d) The administrative law judge may recommend the imposition of mandatory and prohibitory injunctive relief, compensatory damages (which, as provided by the 1991 Civil Rights Act, includes emotional pain, humiliation, embarrassment, and inconvenience), punitive damages, and any other relief the administrative law judge deems appropriate; provided that:

(1) Punitive damages may be recommended only if the administrative law judge finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the ~~complainant; and~~ complainant.

~~(2) In cases involving unlawful employment practices, the administrative law judge may recommend reinstatement, hiring, and/or back pay.~~

In all cases wherein the Commission applies to the Office of Administrative Hearings for the designation of an administrative law judge, the Commission shall be the complainant and the case in support of the Commission shall be presented by the Commission's attorney.

The administrative law judge may, in his or her discretion, recommend that the respondent be awarded reasonable costs and attorneys' fees in the event the respondent prevails."

SECTION 74. S.L. 1997-182 is repealed. This also repeals G.S. 18B-1006(l).

SECTION 75. Section 7.13(b) of S.L. 2002-126 reads as rewritten:

"**SECTION 7.13.(b)** The Office of State Budget and Management shall ~~issue a Request for Proposals for~~ conduct an analysis of the structure and operation of the Department of Public ~~Instruction that identifies~~ Instruction. The analysis shall identify potential efficiencies and savings in the operations of the Department. The analysis may consider consolidation of functions with other agencies and automation of functions.

~~The Request for Proposals may include contingency proposals based on potential savings.~~

The Office of State Budget and Management shall ~~consult with~~ report its findings to the State Board of Education. The State Board of Education shall report to the Joint Legislative Education Oversight Committee ~~prior to the award of the contract.~~ by March 15, 2004, on the results of the analysis."

SECTION 76.(a) Section 5 of S.L. 2002-142 reads as rewritten:

"**SECTION 5.** It is unlawful to release dogs ~~on, or to allow them to run on,~~ on posted land without the written, signed, and dated permission of the owner or lessee of the land. This permission shall be renewed annually in order to remain active."

SECTION 76.(b) This section becomes effective October 3, 2002. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 77.(a) Section 61.5 of S.L. 2002-159 is repealed.

SECTION 77.(b) Section 1.1 of S.L. 2002-162 is repealed.

SECTION 78. The introductory language of the second Section 3 of S.L. 2003-31 reads as rewritten:

"**SECTION ~~3.~~3.1.** Section 36(b) of S.L. 2002-159, as amended by Section 1 of S.L. 2003-2, reads as rewritten:"

SECTION 79. The introductory language of Section 1 of S.L. 2003-103 reads as rewritten:

"**SECTION 1.** Article 1 of Chapter 166A of the General ~~Statues~~ Statutes is amended by adding a new section to read:"

SECTION 80. Section 1 of S.L. 2003-110 reads as rewritten:

"**SECTION 1.** G.S. 20-141 is amended by adding a new subsection to read:

(o) A violation of G.S. 20-123.2 shall be a lesser included offense in any violation of this section. No drivers license points or insurance surcharge shall be assessed on account of a violation of this subsection."

SECTION 81. Section 2 of S.L. 2003-128 reads as rewritten:

"**SECTION 2.(a)** A ~~county~~ county, city, or town may adopt ordinances to regulate the removal and preservation of existing trees and shrubs prior to development within a perimeter buffer zone of up to 50 feet along public roadways and property boundaries

adjacent to developed properties and up to 25 feet along property boundaries adjacent to undeveloped properties."

"**SECTION 2.(b)** Ordinances adopted pursuant to this section shall:

(1) Provide that the required buffer area shall not exceed twenty percent (20%) of the area of the tract, net of public road rights-of-way and any required conservation easements.

(2) Provide that buffer zones that adjoin public roadways shall be measured from the edge of the public road right-of-way.

(3) Provide that tracts of two acres or less, net of public road rights-of-way, that are zoned for single-family residential use are exempt from the requirements of the ordinances.

(4) Provide that the ordinances are limited to situations where undeveloped property is planned or zoned in accordance with adopted planning and zoning regulations.

(5) Provide that a survey of individual trees is not required.

(6) Include reasonable provisions for access onto and within the subject property.

(7) Exclude normal forestry activities on property taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes. However, for such properties, a ~~county~~ county, city, or town may deny a building permit or refuse to approve a site or subdivision plan for a period of three years following completion of the harvest if all or substantially all of the perimeter buffer trees that should have been protected were removed from the tract of land for which the permit or plan approval is sought. A ~~county~~ county, city, or town may deny a permit or refuse to approve a site or subdivision plan for a period of two years if the owner replants the buffer area within 120 days of harvest with plant material that is consistent with buffer areas required under the county's ordinances.

"**SECTION 2.(c)** Before adopting an ordinance under this section, the county board of commissioners or governing body of the city or town shall hold a public hearing on the proposed ordinance. Notice of the public hearing shall be given in accordance with G.S. ~~153A-323.~~153A-323 or G.S. 160A-364, as appropriate.

"**SECTION 2.(d)** ~~This~~ As to county ordinances, this section does not apply to areas located within the corporate limits or extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes of any municipality.

"**SECTION 2.(e)** This section applies to the Town of Rutherfordton and to Wake County only."

SECTION 82.(a) Section 5 of S.L. 2003-147 is repealed.

SECTION 82.(b) G.S. 115C-264 reads as rewritten:

"**§ 115C-264. Operation.**

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. ~~It shall not be mandatory that the provisions of G.S. 115C-522(a) and 143-129 be complied with~~ Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services."

SECTION 82.(c) Section 12 of S.L. 2003-147 reads as rewritten:

"**SECTION 12.** Sections 1 through ~~8~~ 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section ~~9~~ 10 of this act, or April 1, 2004, whichever occurs first. The remainder of this act is effective when it becomes law."

SECTION 82.(d) Subsections (a) and (b) of this section become effective for a local school administrative unit when the Department of Public Instruction certifies that unit as being E-Procurement compliant as provided in Section 10 of S.L. 2003-147, or April 1, 2004, whichever occurs first.

SECTION 83. Section 2 of S.L. 2003-194 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and applies to the 2003-2004 academic ~~year~~ year, beginning with the Spring 2004 semester, and each subsequent year."

SECTION 84.(a) The introductory language of Section 26.(e) of S.L. 2003-212 reads as rewritten:

"**SECTION 26.(e)** ~~G.S. 58-6-30~~ G.S. 58-15-30 reads as rewritten:".

SECTION 84.(b) G.S. 58-31-66, as enacted in Section 27 of S.L. 2003-212, reads as rewritten:

"**§ 58-31-66. Public construction contract surety bonds.**

~~(a)~~ Neither the State nor any county, city, or other political subdivision of the State, or any officer, employee, or other person acting on behalf of any such entity shall, with respect to any public building or construction contract, require any contractor, bidder, or proposer to procure a bid bond, payment bond, or performance bond from a particular surety, agent, producer, or broker.

~~(b) Nothing in this section prohibits an officer or employee acting on behalf of the State or a county, city, or other political subdivision of the State from:~~

~~(1) Approving the form, sufficiency, or manner of execution of the surety bonds furnished by the surety selected by the bidder to underwrite the bonds.~~

~~(2) Disapproving, on a reasonable, nondiscriminatory basis, the surety selected by the bidder to underwrite the bonds~~ because ~~of the financial condition of the surety.~~

~~(c) A violation of this section renders the public building or construction contract void ab initio.~~"

SECTION 84.(c) Subsection (a) of this section becomes effective January 1, 2004. Subsection (b) of this section becomes effective October 1, 2003.

SECTION 85. Section 2.2(a) of S.L. 2003-284 reads as rewritten:

"**SECTION 2.2.(a)** The General Fund availability used in developing the 2003-2005 biennial budget is shown below:

	FY 2003-2004	**FY 2004-2005**
...		
Adjustments to Availability: 2003 Session		
...		
~~Attorney General Settlement Funds~~	~~10,000,000~~	~~0~~
Conflicts of Interest Global Settlement	10,000,000	0

..."

SECTION 86. Section 3.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 3.1.** Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 2005, according to the following schedule:

Current Operations – Highway Fund	**2003-2004**	**2004-2005**
(1) Transportation Admin. (84210)	$72,776,692	$72,898,916
(2) Transportation Operations (84220)	28,190,393	28,150,605
(3) Transportation Programs (84230)		
State Construction		
Secondary	89,600,000	90,590,000
Urban	28,000,000	~~14,000,000~~

			28,000,000
	Public Access	2,000,000	2,000,000
	Spot Safety	9,100,000	9,100,000
	Contingency	15,000,000	10,000,000
	Federal Aid Match	4,160,000	4,280,000
	Maintenance	582,507,482	573,436,154
	Asphalt Plant/OSHA	425,000	425,000
	Capital	-	-
	Ferry Operations	19,677,283	19,677,283
	Aid to Municipalities	89,600,000	90,590,000
	Rail	15,090,919	15,531,153
	Public Transit	79,705,266	80,302,926
(4)	Governor's Highway Safety (84240)	292,449	293,118
(5)	Transportation Regulation (84260)	102,032,933	102,896,913
(6)	Reserves, Transfers, Other Agencies (84270)	214,626,257	217,352,347
TOTAL		**$1,352,784,674**	~~**$1,331,524,415**~~ **$1,345,524,415**"

SECTION 87. Section 6.3(b) of S.L. 2003-284 reads as rewritten:

"**SECTION 6.3.(b)** ~~The~~ Except as provided in G.S. 116-30.1 through G.S. 116-30.4, the Office of State Budget and Management shall report the necessary adjustments to the General Assembly no later than 10 days after the convening of the 2004 Regular Session of the 2003 General Assembly. The Director of the Budget shall include the adjustments prepared in accordance with subsection (a) of this section in the recommended adjustments to the authorized budget for the 2004-2005 fiscal year."

SECTION 88. Section 7.5 of S.L. 2003-284 reads as rewritten:

"**SECTION 7.5.**~~(a) Funds in the Reserve for Experience Step Increase for Teachers and Principals in Public Schools shall be used for experience step increases for employees of schools operated by a local board of education, the Department of Health and Human Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention who are paid on the teacher salary schedule or the principal and assistant principal salary schedule.~~

~~**SECTION 7.5.(b)**~~ Effective July 1, 2003, any permanent certified personnel employed on July 1, 2003, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2003, any permanent personnel employed on July 1, 2003, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%). For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus."

SECTION 89. Section 10.5 of S.L. 2003-284 reads as rewritten:

"**SECTION 10.5.**(a) The Department of Health and Human Services may administer the "Senior Cares" prescription drug access program approved by the Health

and Wellness Trust Fund Commission and funded from the Health and Wellness Trust Fund.

"**SECTION 10.5.(b)** The Department of Health and Human Services may apply to the Center for Medicare and Medicaid Services (CMS) for a Medicaid waiver under section 1115 of the Social Security Act to provide federal matching funds for limited prescription drug and insulin coverage, prescription assistance, and assistance in accessing primary care for elderly persons. The waiver may provide a prescription drug benefit for eligible individuals each benefit year. The waiver may also provide for co-payments for generic drugs and higher co-payments for brand-name drugs. Eligible individuals may include persons who:

(1) Are 65 years of age or older;

(2) Are ineligible for Medicaid prescription drug and insulin coverage;

(3) Are without coverage for prescription drugs or insulin under other public or private health insurance; and

(4) Have a family income that is two hundred percent (200%) or less of the federal poverty level.

"**SECTION 10.5.(c)** Funds previously allocated by the Health and Wellness Trust Fund Commission for Senior Care, as reflected in the Memorandum of Understanding with the Department of Health and Human Services dated May 14, 2002, and the funds allocated by the Commission for the medication management and prescription assistance programs shall be used as the required State and local match for the waiver.

"**SECTION 10.5.(d)** The administration of the Senior Care Program by the Department of Health and Human Services, as authorized in Section 10.5 of S.L. 2003-284, shall include eligibility determination.

"**SECTION 10.5.(e)** The Department of Health and Human Services shall authorize, within allocations made for this purpose, payments for Senior Care, as allowed under the CMS Senior Care Program waiver.

"**SECTION 10.5.(f)** This section is effective when this act becomes law and expires upon the expiration of the CMS waiver or at the time funds for the Program are terminated, whichever occurs first."

SECTION 90. S.L. 2003-284 is amended by adding a new section following Section 10A.1 to read:

"**MAINTENANCE MECHANIC POSITION FOR DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

SECTION 10A.2.(a) Of the funds appropriated in this act to the Department of Agriculture and Consumer Services, the sum of twenty-seven thousand eight hundred eighty dollars ($27,880) for the 2003-2004 fiscal year may be used to establish and support one Maintenance Mechanic position at the Oxford Research Station and the sum of thirty-seven thousand one hundred seventy-three dollars ($37,173) for the 2004-2005 fiscal year may be used to continue and support the Maintenance Mechanic position at the Oxford Research Station.

SECTION 10A.2.(b) This section becomes effective October 1, 2003."

SECTION 91. Section 11.4(e) of S.L. 2003-284 reads as rewritten:

"**SECTION 11.4.(e)** It is the intent of the General Assembly that the funds under ~~subsection (c)~~ subsection (d) of this section are recurring funds."

SECTION 92. Section 17.1 of S.L. 2003-284 is amended by adding the following new subsection to read:

"**SECTION 17.1.(d)** This section becomes effective October 1, 2003."

SECTION 93.(a) Section 23.1 of S.L. 2003-284 is repealed.

SECTION 93.(b) Section 22.6 of S.L. 2002-126 reads as rewritten:

"**SECTION 22.6.(a)** The Department of Revenue may draw up to ~~seven million eight hundred forty thousand five hundred thirteen dollars ($7,840,513)~~three million dollars ($3,000,000) through June 30, ~~2004,~~ 2005, from the collection assistance fee account created in G.S. 105-243.1 in order to pay for the costs of establishing and equipping a central taxpayer telecommunications service center for collections and assistance and for the costs associated with aligning local field offices with the new center. The Department of Revenue shall use the funds drawn during the 2004-2005 fiscal year to support information technology costs.

"~~**SECTION 22.6.(b)** The Secretary of Revenue shall consult with the Joint Legislative Commission on Governmental Operations on a detailed plan with proposed costs before any funds may be expended for these purposes. This plan must be presented by October 31, 2002.~~

"**SECTION 22.6.(c)** Beginning January 1, 2003, and ending on the second quarter following completion of the projects described in subsection (a) of this section, the Department of Revenue must report quarterly to the Joint Legislative Commission on Governmental Operations on the use of the funds and the progress of establishing the new center.

"**SECTION 22.6.(d)** There is appropriated from the collection assistance fee account created in G.S. 105-243.1 to the Department of Revenue the sum of one million six hundred twenty-two thousand eight hundred ninety-six dollars ($1,622,896) for the 2003-2004 fiscal year and the sum of two million one hundred fifty-four thousand five hundred ninety-three dollars ($2,154,593) for the 2004-2005 fiscal year to pay for the costs of establishing and equipping a central taxpayer telecommunications service center for collections and assistance and for the costs associated with aligning local field offices with the new center."

SECTION 94. Section 29.21 of S.L. 2003-284 reads as rewritten:

"**SECTION 29.21.** The Joint Legislative Transportation Oversight Committee shall contract with an independent consultant to study the project delivery process of the Department of Transportation. The study shall examine all aspects of the project delivery process, including (i) Department of Transportation planning, design, and contract letting procedures, and (ii) the effect of other resource and regulatory agency decisions and processes on the project delivery process. The study shall identify all significant causes of delay in the project delivery process, and suggest specific, practical solutions to decrease the time it takes to deliver a transportation project from inception to completion. The Committee shall endeavor to complete this study by April 1, ~~2003.~~ 2004. The provisions of G.S. 120-32.02 shall apply to any contract with a consultant pursuant to this section."

SECTION 95. Section 30.3 of S.L. 2003-284 reads as rewritten:

"**SECTION 30.3.** The annual salaries, payable monthly, for the 2003-2004 and 2004-2005 fiscal years for the following executive branch officials are:

Executive Branch Officials	**Annual Salary**
Chairman, Alcoholic Beverage Control Commission	$92,946
State Controller	130,078
Commissioner of Motor Vehicles	92,946
Commissioner of Banks	104,523
Chairman, Employment Security Commission	129,913
State Personnel Director	102,119
Chairman, Parole Commission	84,871
Members of the Parole Commission	78,356
Chairman, Utilities Commission	116,405
Members of the Utilities Commission	104,523
Executive Director, Agency for Public Telecommunications	78,356
~~General Manager, Ports Railway Commission~~	~~70,755~~
Director, Museum of Art	95,240
Executive Director, North Carolina Housing Finance Agency	115,031
Executive Director, North Carolina Agricultural Finance Authority	90,470
State Chief Information Officer	130,000"

SECTION 96.(a) Section 30.20.(k) of S.L. 2003-284 is repealed.

SECTION 96.(b) G.S. 135-106(a), as rewritten by Section 3.20.(l) of S.L. 2003-284, reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is unable to perform any occupation ~~for which the beneficiary or participant is reasonably qualified for by~~ or employment commensurate to the beneficiary's or participant's education, training or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or

participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience, the Department of State Treasurer and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 96.(c) Subsection (a) of this section becomes effective July 1, 2003. Subsection (b) of this section becomes effective July 1, 2004, and applies only to persons who are not vested in the disability plan in question on July 1, 2004.

SECTION 97. Section 45.12 of S.L. 2003-284 reads as rewritten:

"**SECTION 45.12.** Sections 45.2 through 45.5, Section 45.6, and Sections ~~45.8~~ 45.9 through 45.10 of this act become effective July 15, 2003. Sections 45.6A, 45.7, 45.8, and 45.11 become effective October 1, 2003. Section 45.5A and Section 45.6B become effective January 1, 2004. The remainder of this part is effective when it becomes law."

SECTION 98. Section 46.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 46.1.** Repair and Renovation. – This section authorizes the issuance or incurrence of special indebtedness in a maximum aggregate principal amount of three hundred million dollars ($300,000,000) to be used only in accordance with this section

for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund.

Proceeds of the Repair and Renovation special indebtedness shall be used only for the purposes and in accordance with the procedures provided in G.S. 143-15.3A, the Repairs and Renovations Reserve ~~Account.~~Account and Section 31.5 of this act, as provided in this section.

Except in the case of an emergency as provided in G.S. 143-15.3A, the Director of the Budget shall use the Repair and Renovations funds only for repairs and renovations that have been approved by an act of the General Assembly or, if the General Assembly is not in session, for repairs and renovations about which the Director of the Budget has first consulted with the Joint Legislative Commission on Governmental Operations under G.S. 143-15.3A(c).

For debt to be issued during the 2003-2004 fiscal year, the Director of the Budget shall select repair and renovation projects as follows: an amount equal to forty-six percent (46%) of the debt shall be issued for projects identified by the Board of Governors of The University of North Carolina in accordance with Section 31.5 of this act and fifty-four percent (54%) shall be issued for projects identified by the Office of State Budget and Management in accordance with Section 31.5 of this act.

The Director of the Budget shall direct the State Treasurer to carry out the financing for repair and renovation projects selected pursuant to this section. Special indebtedness authorized by this section shall be issued or incurred only in accordance with Article 9 of Chapter 142 of the General Statutes, as enacted by this part."

SECTION 99. The lead-in language of Section 46.2 of S.L. 2003-284 reads as rewritten:

"**SECTION 46.2.** Article 9 of Chapter 142 of the General Statutes, as enacted by S.L. 2003-314, is rewritten to read:".

SECTION 100. Section 3 of S.L. 2003-300 reads as rewritten:

"**SECTION 3.** Waiver of Deadlines, Fees, and Penalties. – Except as prohibited by the Constitution, the Governor may extend deadlines and waive penalties or fees as is necessary to alleviate hardship created for deployed military personnel serving in Operation Iraqi Freedom. This authority includes the authority to do all of the following:

(1) Extend for up to 90 days from the end of deployment the validity of a permanent or temporary drivers license issued under G.S. 20-7 to deployed military personnel.

(2) Waive civil penalties and restoration fees under G.S. 20-309 for any deployed military personnel whose motor vehicle liability insurance lapsed during the period of deployment or within 90 days after the military member returned to North Carolina if the military member certifies to the Division of Motor Vehicles that the motor vehicle was not driven on the highway by anyone during the period in which the motor vehicle was uninsured and that the owner now has liability insurance on the motor vehicle.

(3) Allow up to 90 days from the end of deployment for any deployed military personnel to renew ~~a license as defined in G.S. 93B-1.~~ an occupational license. During the period of deployment or active duty and until the expiration of the 90-day period provided for in this subdivision, expired occupational licenses that are within the scope of this act remain valid, as if they had not expired. For the purposes of this section, the term "occupational license" means any license (other than a privilege license), certificate, or other evidence of qualification that an individual is required to obtain before the individual may engage in or represent himself or herself to be a member of a particular profession or occupation.

(4) Require that any renewal fee applicable to the renewal of a license under subdivision (3) of this section be prorated over the period covered by the license and reduced in proportion to the period of time that the licensee was deployed outside the State."

SECTION 101. Since S.L. 2003-315 has enacted the same matter, if House Bill 27, 2003 Regular Session, becomes law, then Section 2 of House Bill 47 is repealed, and G.S. 145-19, as enacted by House Bill 47, is recodified as G.S. 145-20.

SECTION 102. If Senate Bill 236 becomes law, Section 12 of that bill reads as rewritten:

"**SECTION 12.** Parts 1 and 8 of this act are effective for taxable years beginning on or after January 1, 2003. Part 5 of this act becomes effective July 1, 2003. ~~Part 9 of this act is effective for taxable years beginning on or after January 1, 2003, and shall expire for taxable years beginning on or after January 1, 2005.~~ Part 10 of this act becomes effective January 1, 2004. The remainder of this act is effective when it becomes law."

SECTION 103. If Senate Bill 668, 2003 General Assembly, becomes law, then G.S. 18B-1001.1(b) reads as rewritten:

"(b) A wine shipper permittee that ships to addresses in the State more than 1,000 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell the products of the wine shipper permittee under Article 12 of this Chapter if the wine shipper permittee is contacted by a wholesaler that wishes to sell the products of the wine shipper permittee. This provision shall not be construed to require the wine shipper permittee to appoint the wholesaler that originally contacted the wine shipper permittee. Wine purchased by a resident of the State at the premises of the wine shipper permittee and shipped to an address in the State under G.S. ~~18B-109(b)~~18B-109(d) shall not be included in calculating the total of 1,000 cases per year."

SECTION 104.(a) If Senate Bill 919, 2003 Regular Session, becomes law, G.S. 50B-3.1(h) as enacted by that law, reads as rewritten:

"(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the

firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge."

SECTION 104.(b) This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SECTION 105. Wherever the term "Public Campaign Financing Fund" appears in Chapter 105 or Chapter 163 of the General Statutes, in any other chapter of the General Statutes, or in any act of the General Assembly, the term is changed to read "Judicial Elections Fund."

SECTION 106. Notwithstanding any other provision of law, Fayetteville State University may retain the proceeds from the sale of the existing chancellor's residence. Fayetteville State University may use the proceeds from the sale of the existing chancellor's residence, and any other nonappropriated funds available, to construct a new chancellor's residence. Proceeds from the sale not used for that purpose shall revert.

SECTION 107.(a) If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices in G.S. 163-1 until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan.

SECTION 107.(b) If the filing period or primary election or both are postponed under this section, the State Board of Elections shall adopt rules for the implementation of the primary election schedule. Adoption of those rules is not subject to Chapter 150B of the General Statutes. Those rules shall include a postponed filing period and other necessary parts of the election schedule. The rules shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its rules, including a Revised Primary Timetable, to county boards of elections.

SECTION 107.(c) The State Board of Elections shall be governed by the following limitations:

(1) Any postponement of the candidate filing period or the primary shall apply to all offices in G.S. 163-1 whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The

postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

(3) The State Board shall set a filing period no shorter than 10 business days.

(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate.

SECTION 107.(d) If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office in September of the year of the election.

SECTION 107.(e) For the 2004 primary election only, G.S. 163-112 shall be applied by substituting "10 days" for "30 days" wherever it appears.

SECTION 107.(f) The provisions of this section apply during the 2004 election year only.

SECTION 108. The following position and position number for position reductions in the Department of Revenue, as provided in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, June 28, 2003, is amended as follows: in Project Tax Collect, delete "Revenue Officer I – #4784-000-0076-639" and substitute "Revenue Officer I – #4784-0000-0074-116".

SECTION 109.(a) The Department of Environment and Natural Resources may identify positions in the Administrative Divisions and Regional Offices, in addition to the operating costs in the Administrative Divisions and Regional Offices, to comply with a reduction of two hundred thousand dollars ($200,000) for the 2003-2004 fiscal year and for the 2004-2005 fiscal year in operating support in the Administrative Divisions and Regional Offices required by Section 2.1, S.L. 2003-284, as set forth in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets. Notwithstanding G.S. 143-23 or G.S. 143-34.1, the Department of Environment and Natural Resources may continue and support the positions identified under this subsection from receipts rather than from its General Fund appropriation in order to fulfill the reduction of two hundred thousand dollars ($200,000) under this subsection.

SECTION 109.(b) The Department of Environment and Natural Resources may identify operating support reductions in the Division of Parks and Recreation, in addition to reductions to seasonal staff in the Division of Parks and Recreation, to comply with a reduction of one hundred forty-four thousand dollars ($144,000) for the

2003-2004 fiscal year and for the 2004-2005 fiscal year in seasonal staff in the Division of Parks and Recreation required by Section 2.1, S.L. 2003-284, as set forth in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets.

SECTION 109.(c) The Department of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations no later than 30 days after the 2003 Regular Session of the 2003 General Assembly adjourns to a date certain the specific line items from which the reductions under subsection (a) and subsection (b) of this section were identified.

SECTION 110. Unless otherwise provided, this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

7-15-03 am — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Fitzgerald	DHHS/DFS
Ed Browning	DHHS/DFS/EMS
Kevin Fitzgerald	DHC
Bill Ruston	AJP
Pheon Bush	DHHS/DSI
Wilbert Mouzon	DHHS/DSS
Starla McKinney	DHHS
Calvin Leggett	DOT
Susan Coward	NCDOT
Steve Woodson	NCFB
Julie Woodson	NCCBI
Johnnie F. McLean	S.B.E.
Robin Smith	DENR
Sheryl Stephens	DENR
Everett Case	Hunton & Williams
Molly Ryan	NCSBA
Peggy Myers	
Angie Faris	MI
Hugh Tilson	NCHA
Ann Wall	OWL
Jim Blackburn	Assoc. County Commissioners
Dan Blume	CABarrus
Pam Deardorff	Retirement

VISITOR REGISTRATION SHEET

J-1 Committee — 7-15-03 Am
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pamela Best	AOC
Sahar Rafek	VIF
[illegible]	[illegible]
[illegible]	SBE
Katherine Joyce	NCASA
Laura Harper	SEANC
Ardis Watkins	SEANC
Audrey L. Galloway	[illegible]
Whitney Bowman	
Rick Zechini	NC Assn. of REALTORS
Sireny Schmidt	NC Justice Center
[illegible]	[illegible]
Mark Fleming	University System
Roz Sawell	NC Child Care Coalition
Joshua Bovdich	Action Research
Stacy [illegible]	NCDOC
John Phelps	NCLM
Michael Hauser	NCAE
John McMillan	MFG
GARY SALAMIDA	GSK
[illegible]	GSK
[illegible]	DHHS-DCD
Steve Hill	CCNC
Pricy Harrison	CRC
[illegible]	OSBR
Tommy Sutton	[illegible]
John Mackey	[illegible]
Jesse Goodman	DHHS

VISITOR REGISTRATION SHEET

J-1 Committee — 7-15-03 AM
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Adam Pridemore	NCASA
John Bowdish	AstraZeneca
Michael Roach	ORH
Wilbert Morris	DHHS/DSS
P. Bryan Hall	General Statutes Com
Mary Ann Gibson	Capitol Press
Hal Miller	NCFACT
Joshua Crane	NC State Grange
Patricia Rakeles	NCACC
Bob Lanier	HHS
Jessie Goodman	DHHS
Bob Fitzgerald	DHHS/MHS
Mike Hilliard	NCSA
Marvin Alexander	Regional Sports Bd
Roger Bone	Bone & Assoc
Ghesson Hamer	NC Sierra Club
Hailey Edwards	Rand Kirkman
Shaun Matthews	DOT - DMV
DEAN PLUNKETT	NCBWWA
Jonnie Carr	Liquor Store Lobbyist
[illegible]	DENR
Rosa Board	DHHS-DSD
[illegible] Sawyer	NC ICC
Jack Cozort	Parker Poe
[illegible]	DMV
George Suddath	NCSDA
[illegible]	NCSDA
[illegible]	NCSBA

VISITOR REGISTRATION SHEET

F-1 Committee — 7-15-03 AM

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hall	Democracy North Carolina
Courtney Coonrod	Dept. of Insurance
Coleen Kochanek	Hafer & Caldwell, PA
Carol Lauer	EGHS
Spencer Harrison	Rep. Glazier
Andy Romanet	WCCM
Sheryl Stephens	DENR
Bill Wilson	NCATL
Steve Vell	CCNC
Mary Thompson	MCIC
Beth Anne Mumford	NCPC
David Anders	PFPNC
Richard O'Brien	[illegible]
Robert Edmonson	Sec of State

HOUSE BILL 281:
Technical Corrections Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Culpepper
Date:	July 15, 2003	**Summary by:**	Robin Johnson
Version:	S281-CSRH-53[v. 37]		Walker Reagan
			Staff Attorneys

SUMMARY: ***The Proposed Committee Substitute for House Bill 281 makes technical corrections and other changes to various statutes and session laws. Part I of the PCS (Sections 1 through 13) were recommended by the General Statutes Commission and have been summarized in a separate document by the Commission's staff. This summary will cover Part II (all remaining sections of the PCS), which contains changes identified by legislative staff, agency staff, and others.***

BILL ANALYSIS:

Sections 1-13. Pages 1-15.

- Please see the separate summary on these sections, which are recommended by the General Statutes Commission.

Section 14. – Page 15.

- Amends G.S. 1-44.2, which creates a presumption that upon abandonment of a railroad easement, "all right, title and interest in the strip, piece or parcel of land...shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement." Subsection (b) creates a statute of limitations to challenge this presumption by providing that "persons claiming ownership contrary to the presumption...have a period of one year from the date of enactment of this statute or the abandonment of the easement, whichever later occurs,...to bring any action to establish their ownership."
- In *McDonald's Corporation v. Dwyer*, 338 N.C. 445 (1994), the N.C. Supreme Court held the statute of limitations in subsection (b) to be a violation of due process "by effectively taking property of record title holders...without affording notice, an opportunity to be heard, and just compensation." This section deletes this language from subsection (b) of the statute.

Section 15. Pages 15-16.

- Amends G.S. 1-47(1) (10-year statute of limitations following money judgment) and 1-52(8) (3-year statute of limitation following judgment for fees due to a clerk, sheriff or other officer) to conform to changes made in S.L. 2003-59. Changes time statutes of limitation start to run from "rendition of judgment" to "entry of judgment".

Section 16. Pages 16-17.

- Amends G.S. 7A-16 to strike language providing that the initial terms for the three additional Court of Appeals judgeships appointed by the Governor on or after December 15, 2000 are effective until January 1, 2005.
- In *Pope v. Easley*, 354 N.C. 544 (2001), the N.C. Supreme Court held that, while the creation of the three judgeships was constitutional, the "provisions making the creation of the new judgeships effective upon gubernatorial appointment and allowing the appointees to serve for nearly four years before facing election" violated Article IV, Section 19 of the State Constitution. This provision provides that appointees "hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs."

Section 17. Page 17.

- G.S. 7B-808(b), as enacted by S.L. 2003-140, refers to a mental health evaluation **of a juvenile** under another statute. However, that other statute (G.S. 7B-503) does not mention a mental health evaluation of a juvenile. It does refer to a mental health evaluation of an alleged abuser or abusers. The Administrative Office of the Courts agrees with the proposed solution of removing the reference to "of a juvenile" in the new G.S. 7B-808(b).

Section 18. Page 17.

- S.L. 2001-487, s. 40(a) purported to amend the catch line of G.S. 8-53.5; however, bill drafting coded language was not used, meaning the change was not made.

Section 19. Pages 17-18.

- Amends G.S. 14-202.4, enacted in S.L. 1999-300, which made it unlawful for school personnel to take indecent liberties with a student. The change is to clarify that the statute also applies to situations where the student is present for a school-related or school-sponsored activity at another school and the school personnel is employed, volunteers or is present at that other school. This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Section 20. Pages 18-19.

- Amends G.S. 14-298 by codifying due process in the seizure of video poker machines. The 4th Circuit in *Helton v. Good* held that due process for this action must be codified.

Section 21. Page 19.

- Repeals G.S. 14-401.5, a criminal statute prohibiting non-amateur phrenology, palmistry, fortune-telling, or clairvoyance in 61 named counties. The statute exempts the amateur practice of those arts, provided it is done in connection with school or church socials in school or church buildings. A Superior Court in Haywood County and a District Court in Buncombe County held the statute to be a violation of the State Constitution, specifically Article II, Section 24(j) (non-statewide law regulating trade) and of Article II, Section 14 (freedom of speech). The District Court additionally found the statute violated the freedom of religion and due process protections of the U.S. and State Constitutions. The Haywood Superior Court case was *Somers v. Alexander*, 00 CVS 255 (2001) and the Buncombe District Court case was *State v. Rajaniemi*, 99-CR-8818 (1999).

Section 22. Page 19.

- Amends G.S. 15-190 by providing that the names of persons designated to carry out an execution are confidential and exempted from Chapter 132 (Public Records). The names are not subject to discovery or introduction in evidence in any proceeding unless the Senior Resident Superior Court Judge for Wake County compels disclosure upon a finding that disclosure is necessary to proper administration of justice.

Section 23. Pages 19-20.

- Amends G.S. 18B-600(f), enacted in S.L. 2003-218 (Senate Bill 19), which enacted a new provision regarding Township ABC elections. The change clarifies that it applies only to malt beverage, unfortified wine, and mixed beverage elections. It does not authorize townships to hold ABC store elections.

Section 24. Page 20.

- Repeals G.S. 18-1006(j)(4) which authorizes the ABC Commission to issue permits for the sale of alcoholic beverages to certain establishments in Swain County located within a recreation district. This statute has been declared "void and unenforceable" by a North Carolina court as a violation of the State constitutional requirements for local and general laws.

Section 25. Pages 21-22.

- Repeals G.S. 18B-1006(m)(3) which authorizes the ABC Commission to issue permits for the sale of alcoholic beverages to certain establishments in Halifax County located within an Interstate Economic Development Zone. This statute has been declared "void and unenforceable" by a North Carolina court as a violation of the State constitutional requirements for local and general laws.

Section 26. Page 21.

- Corrects misspelled word in G.S. 30-3.6(c) as enacted by Section 5 of S.L. 2003-296. Changes "decedent's" to "decedents".

Section 27. Pages 21-22.

- Amends G.S. 35A-1213(b) by removing the prohibition on nonresidents being appointed as general guardian or as guardian of a resident's estate. Nonresidents already may be appointed guardian of the person of a State resident.

Section 28. Pages 22-24.

- Corrects G.S. 40A-3(b) and (b1), which currently have the same catch line.

Section 29. Pages 24-25.

- Corrects G.S. 40A-42(a)(1) and (2), by adding distinctive catch lines.

Section 30. Pages 25-27.

- Amends various sections of Chapter 48 (Adoption) relative to when a punitive father is entitle to notice of adoption proceedings.
- Creates a process for a post-birth determination of whether consent of the 'alleged' father is needed. (Currently, there is a process for this to have pre-birth, but the statutes are silent as to post-birth.)
- Clarifies that if a person's consent is not necessary to the adoption, then that person has no right to participate in the adoption proceedings.
- Clarifies the notice requirements - 1) allows the court to waive, for cause, service on the spouse of the petitioner; and 2) clarifies there is no need to notice to someone whose consent is not required for the adoption as determined in G.S. 48-2-206.

- Clarifies that a statement of the reasons for non-compliance with the Interstate Compact for Placement of Children is acceptable where a statement of compliance is required in Chapter 48 interstate adoptions.

Section 31. Page 27.

- Repeals incorrect and unnecessary definitions in G.S. 54B-266 and G.S. 54C-200 that resulted from S.L. 2001-193, which directed the transfer of the Savings Institution Division to the State Banking Commissioner.

Section 32. Pages 27-28.

- At the request of the Department of Insurance, this section amends G.S. 58-64-33(a) by reinstating statutory language that was inadvertently changed by S.L. 2003-193, the Department's Continuing Care Retirement Communities Technical Corrections bill.

Section 33. Pages 28-29.

- (a) Amends G.S. 62-3(23) to delete Office of State Controller and substitute Office of Information Technology.
- (b) Amends G.S. 147-33.92 to clarify contradictory use of terms "local governmental units" and "local governmental entities", and to correct a reference to the federal Communications Act of 1934.

Section 34. Pages 29.

- Repeals Article 4 of Chapter 72, an antiquated law requiring the licensure and regulation of tourist camps and homes, cabin camps, roadhouses, and public dance halls.

Section 35. Page 29.

- Amends G.S. 105-129.6(b) to change the date the Department of Revenue must publish its report on the Bill Lee Act from March 1 of each year to April 1 of each year. The Department requests this change.

Section 36. Pages 29-30.

- Amends G.S. 110-90(1a), as enactd in the 2003 Budget Bill, to clarify that the child care licensing fee is an annual fee and is connected to the annual monitoring related to the licensure of child care facilities that is done every three years. Other adjustments to the language will allow Division of Child Daycare to implement the fee by October 1, 2003.
- Amends Sections 5.1.(a) and 5.1.(p) to match the money in the block grant to language at the end of the block grant provisions and to clarify that the money being used in the Social Services Block Grant has been transferred from the TANF Block Grant.

Section 37. Pages 30-31.

- Amends G.S. 110-139.2(b1) to allow a financial institution to agree with the Child Support Enforcement Agency that notice of levies on bank accounts for child support arrears may be sent to the institution in a manner different from formal service under Rule 4 of the Rules of Civil Procedure if the institution agrees in writing to a different method anytime prior to notice of the service. Because formal service would normally be made to the registered agent of the corporation, or the corporate headquarters, the paperwork might be considerably delayed in getting to the department that effects the levy on the account. This amendment would allow the institution to have the notice sent directly to the appropriate department and would allow the notice to be sent by email or fax.

Section 38. Page 31.

- Recodifies G.S. 114-19.12 as 114-19.14, to avoid conflict.

Section 39. Page 31.

- Deletes paragraph that unnecessarily appears twice in G.S. 115C-84.2.

Section 40. Pages 31-32.

- Amends G.S. 115C-238.29D(d) by extending the terms of charters, and their renewals, from a maximum of five years to a maximum of 10 years. At least once every 5 years, the State Board of Education shall review each charter school's operations to ensure that the school is meeting the expected academic, financial, and governance standards. This change would take effect when it becomes law and would apply to charters granted or renewed after that date.
- Amends G.S. 115C-238.29F(e)(1) by requiring all charter school teachers in grades 6-12 to be college graduates if they teach in the core subject areas of math, science, social studies, and language arts. This section would become effective when it becomes law and would apply to persons employed by charter schools for the 2003-2004 and subsequent school years.

Section 41. Pages 32-33.

- Amends G.S. 115C-437 by removing the 10% cap on collection cost The University of North Carolina (UNC) is allowed to deduct from fines and forfeitures collected before the fines and forfeitures are allocated to the local school boards.

Section 42. Page 33.

- Creates a new G.S. 116-40.7 that provides for internal auditors within The University of North Carolina and its constituent institutions. The new statute would clarify that the working papers of UNC's internal auditors are not public records,

though their final reports are. This provision is similar to the internal auditor provisions applicable to those applicable to DHHS internal audits.

Section 43. Pages 33-34.

- Amends G.S. 116-238.1, enacted by S.L. 2003-284, to clarify that the tuition grant for students who graduate from the School of Science and Math is limited to the cost of tuition and must be reduced by other scholarships and grants that the student may receive for tuition.

Section 44. Pages 34-35.

- Amends G.S. 116-243 (Arboretum Board of Directors) to make gender-neutral the term "President of The University of North Carolina."

Section 45. Pages 35.

- Amends Article 6 of Chapter 120 to clarify number of agency reports made to General Assembly.

Section 46. Pages 35-36.

- Makes conforming changes to delete "State" before "Legislative Library" in several statutes.

Section 47. Page 36.

- Repeals G.S. 121-4(16) – a duplicate subdivision enacted in 1991 related to the operation of a restaurant at the NC Museum of History.

Section 48. Pages 36-40.

- Amends various sections of Chapter 131E to conform to changes made in 2001.
    - Substitutes "EMS personnel" for "ALS professionals" and to replace "sponsor hospital" with "EMS system".
    - Adds definitions of "EMS instructors" and "peer review committee".
    - Clarifies the authority of the NC Medical Care Commission to establish standards for EMS systems, EMS educational institutions, and specialty care transport programs.
    - Authorizes the establishment of regional trauma peer review committees and their responsibilities.
- Amends G.S. 143-509(9) to conform to a change made in S.L. 2002-179.

Section 49. Pages 40-41.

- Amends G.S. 135-3(8)c. and 115C-325(a)(5a) to allow retired teachers to return to teaching in a charter school and continue to collect retirement benefits, thereby treating them the same as retired teachers who return to traditional public schools.

Section 50. Page 41.

- Amends G.S. 135-40.8(e), as enacted in S.L. 2003-284, to clarify that the State Health Plan pays the same amount to out-of-plan providers when emergency services are required and provided by out-of-plan providers whether services are provided in-state or out-of-state.

Section 51. Page 42.

- Amends G.S. 136-179, as amended by S.L. 2003-284, to provide that the intrastate project that would complete 4-laning for US-74 would include the Shelby Bypass and Cleveland County (in addition to Polk and Rutherford Counties).

Section 52. Page 42.

- Amends G.S. 136-180(a), as amended by S.L. 2003-284, to correct the spelling of road name in Greensboro Loop. Changes "Lewis-Fleming" to "Lewiston-Fleming".

Section 53. Page 42.

- Recodifies G.S. 147-33.89, as enacted by S.L. 2003-172, as G.S. 147-33.90 to avoid a conflict with S.L. 2003-153.

Section 54. Pages 42-43.

- Amends G.S. 148-22.2 and 148-46.2 to correct an internal citation and change "Article" to "section".

Section 55. Pages 43-44.

- Clarifies that the Department of Correction must reimburse county jails for costs for housing prisoners for criminal sentences of 30 days or more. This would preclude payment for confinement for civil sentences (i.e. civil contempt). Local jails must submit invoices within one year of the date of commitment.

Section 56. Page 44.

- Modifies the temporary rulemaking authority for the certificate of need program under the State Medical Facilities Plan to provided that rules necessary for review criteria under the Plan may be adopted by temporary rules.

Section 57. Pages 44-45.

- Effective July 1, 2003, recodifies G.S. 150B-21.1(a11), as enacted by Section 3 of S.L. 2003-184, as G.S. 150B-21.1(a)(16), so as to reflect the rewrite of G.S. 150B-21.1 by S.L. 2003-229.

Section 58. Page 45.

- Directs the Revisor of Statutes to ignore purported amendment and recodification of a statute that expired before the effective date of the purported changes.

Section 59. Page 45.

- Eliminates Coroner's Office in Johnston County, effective upon the expiration of this coroner's current term.

Section 60. Page 45.

- Amends G.S. 163-34 to delete references to "constable", a term no longer used.

Section 61. Pages 45-47.

- Amends G.S. 163-35(b) to allow the State Board, by a vote of all the remaining members, to delegate to one or more of its members the authority to hear and decide on the dismissal of a county election director, whether that dismissal proceeding was initiated by the county board or by the State Board. This would spell out that the designees have the authority not only to conduct the hearing, but also to decide the case. While new to the statute, it would codify State Board practice.

Section 62. Page 47.

- Clarifies a new requirement under the federal HAVA election laws for determining whether a voter must prove identity the first time they vote following a "mail-in" registration. This amendment says that if a voter-registration applicant gives another person the job of taking their application form to the board of elections, the board of elections shall treat that form for HAVA I.D. purposes according to the manner the delegatee used in transporting the form. If the delegatee mails the form in, it's a registration by mail. If the delegatee hand-carries the form in, it's not a registration by mail.

Section 63. Page 47.

- Amends G.S. 163-278.7(b)(7) to clarify the board must keep any account number included in any report required to be filed with the board under Article 22A of Chapter 163 (Regulating Contributions and Expenditures in Political Campaigns) after March 1, 2003. (The "board" is the State Board of Elections for candidates for State, legislative, and judicial offices and the county or municipal board of elections for candidates for county and municipal offices.) This section would be effective on and after January 1, 2003.

Section 64. Page 47.

- Repeals G.S. 163-278.12A. This statute requires "any individual, person, political committee or entity" making expenditures for printed materials or advertisements naming a political candidate to file a report with the State Board of Elections.
- The Fourth Circuit Court of Appeals held this statute to be "unconstitutionally overbroad as a regulation of issue advocacy when a speaker advocates for or against a political candidate." *Perry v. Bartlett*, 231 F.3d 155 (4th Circuit 2000).

Section 65. Pages 47-48.

- Clarifies the Judicial Campaign Reform Act by setting out criteria that the State Board of Elections must use in establishing guidelines for permissible expenditures of public campaign funds. This provision requires that the State Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy.

Section 66. Page 48.

- Corrects reference in G.S. 168-2 to Department of Economic and Community Development (no longer exists) – now Department of Commerce.

Section 67. Pages 48-49.

- Amends G.S. 168-4.2 through G.S. 168-4.4 by (i) substituting "service animal" for "assistance dog" to conform to term used in the federal Americans with Disabilities Act, and (ii) adding "person with a seizure disorder" to the list of persons with disabilities who are allowed to have a service animal accompany them in public facilities, accommodations, and conveyances.

Section 68. Pages 49-50.

- Revises a special provision in the 2002 budget bill that governs how the local government in Scotland County is to appropriate funds for public schools each year. The changes simply clarify, for the sake of the school system and county commissioners in Scotland Co., how the calculation of the minimum appropriation is to be done.

Section 69. Pages 50-51.

- Removes the authority of the Orange County Human Relations Commission to regulate discrimination in employment. The Supreme Court ruled last month in Williams v. Blue Cross v. Orange County, No. 277PA01 (2003), that by enacting the local bill giving the commission that authority, the General Assembly violated Article II, Sec. 24(j) of the State Constitution. That section says there must be only statewide laws "Regulating labor, trade, mining, or manufacturing." The Court said the Orange County Human Relations Commission said up a separate scheme for doing that, adding protected categories of "familial status" and "veteran status" that aren't protected elsewhere in the State and providing a special

complaint procedure. They said this was an unconstitutional act regulating labor and trade. The amendment removes "employment" from the Orange Commission's jurisdiction, but still allows the Orange Commission to regulate discrimination in housing and public accommodations.

Section 70. Page 51.

- Repeals S.L. 1997-182, including G.S. 18B-1006(l), which authorizes the Alcohol Beverage Control (ABC) Commission to issue permits for the sale of alcoholic beverages within the Lumberton Economic Development and Tourist District. have been declared "void and unenforceable" by a North Carolina court as a violation of the State constitutional requirements for local and general laws.

Section 71. Page 51.

- Amends S.L. 2002-126 by deleting the requirement that OSBM issue a Request for Proposals to analyze DPI's operation and structure. Instead, OSBM will conduct the analysis and report to the State Board of Education, which will then report to the Joint Legislative Education Oversight Committee by March 15, 2004.

Section 72. Page 51.

- Amends Section 5 of S.L. 2002-142, a local law governing hunting in Pitt County. The change, effective October 3, 2002, would delete the prohibition on allowing dogs to run on posted land.

Section 73. Page 51.

- Repeals two session laws (S.L. 2002-159 and S.L. 2002-162) that made an original local act (applicable only in Craven, Nash and Pamlico Counties) applicable statewide and effective in all other counties July 1, 2003. The effect would be that the original act would continue to apply in Craven, Nash, and Pamlico Counties only, until January 1, 2004, when the old act will be repealed and the new act will become effective in all counties.
- S.L. 2002-96, as it originally passed, provided for removal of military discharge papers only in Nash, Craven, and Pamlico Counties. The two later session laws made the act applicable statewide with an effective date of July 1, 2003, for all other counties. After the law passed, it was determined that the system that was put into place to remove the discharge papers was impossible to implement in most counties because the records were intermingled with other public records. The new substantive provisions passed this session in House Bill 818 will repeal the original law and substitute a workable system, but that won't be effective until January 1, 2004.

Section 74. Page 51.

- S.L. 2003-31 has two Section 3's. This amendment will renumber the second Section 3 as Section 3.1.

Section 75. Page 51-52.

- Amends the introductory language in Section 1 of S.L. 2003-103 by deleting "statues" and substituting "statutes".

Section 76. Pages 52-53.

- Amends Section 2 of S.L. 2003-128, a local act applicable to the Town of Rutherfordton and Wake County, to add clarifying language. It deletes "county" and substitutes "county, city, or town" and their "governing bodies".

Section 77. Page 53.

- Amends G.S. 115C-264, as amended by S.L. 2003-147, to correct an internal reference to G.S. 143-129, the formal bidding requirement that no longer applies. Instead, G.S. 115C-522(a) incorporates the rest of Article 8 of Chapter 143, which does apply.
- Amends Section 12 of S.L. 2003-147, by correcting internal references to bill sections in the effective date provision.

Section 78. Page 53-54.

- Amends S.L. 2003-194, by extending the date by which UNC must provide to students information on meningitis vaccines. The date currently is the 2003-2004 academic year; this change would allow UNC to begin with the Spring 2004 semester.

Section 79. Page 54.

- Corrects introductory reference to statute being amended in Section 26.(e) of S.L. 2003-212.
- Deletes language from newly enacted G.S. 58-31-66, which prohibits public entities, as part of a public building or construction project, from requiring contractors, bidders, or proposers to procure a bond from a particular surety, agent, broker or producer. The language that would be deleted (i) allows public officers or employees (to approve the form, sufficiency or manner of execution of the surety bond selected by the bidder, (ii) allows public officers or employees to disapprove on a reasonable, nondiscriminatory basis the selected surety because of the surety's financial condition, and (iii) makes a public contract void ab initio if the law is violated.
- Changes in this section would take effect October 1, 2003.

Section 80. Page 54.

- Corrects an incorrect reference in the 2003 Budget Bill for availability to the correct name of the national Merrill-Lynch securities settlement known as the Conflicts of Interest Global Settlement.

Section 81. Pages 54-55.

- Amends Sec. 3.1 of S.L. 2003-284, by changing the second year of funding for State Construction - Urban from $14 million to $28 million and changing the corresponding total for 2004-2005 from $1,331,524,415 to $1,345,524,415. This would reflect final budget instructions given to staff.

Section 82. Page 55.

- Clarifies budget management flexibility for The University of North Carolina for the 2004-2005 fiscal year.

Section 83. Pages 55-56.

- Amends Sec. 7.5 of S.L. 2003-284 by deleting a paragraph repeated elsewhere.

Section 84. Page 56.

- Amends Section 10.5 of S.L. 2003-284 by authorizing DHHS to apply for a Medicaid waiver to provide for federal matching funds for limited prescription drug and insulin coverage, prescription assistance, and assistance in accessing primary care for elderly persons based on funds expended from the Health and Wellness Trust Fund.

Section 85. Pages 56-57.

- Adds a new Section 10A.2(a) to restore an added position in the money report when three items were rolled together for the Oxford Research Station. The money was properly identified in the money report, but there was no corresponding position count for the new maintenance mechanic that was associated with that item (see. p.H4 in the money report item # 36).

Section 86. Page 57.

- Corrects an internal reference in Section 11.4 of S.L. 2003-284.

Section 87. Page 57.

- Makes Section 17.1 of S.L. 2003-284 effective October 1, 2003, rather than July 1, 2003.

Section 88. Page 57.

- Amends Section 23.1 of S.L. 2003-284, which amends section 22.6 of last year's budget bill. The Department of Revenue wants authorization to use $3 million from the collection assistance fee account to support IT costs through the end of the 2004-05 fiscal year.

Section 89. Pages 57-58.

- Corrects a report date (from April 1, 2003 to April 1, 2004) for the Joint Legislative Transportation Oversight Committee's study on the project delivery process.

Section 90. Page 58.

- Amends Sec. 30.3 of S.L. 2003-284 by deleting line item for General Manager of Ports Railway Commission, which was repealed last year.

Section 91. Page 58.

- Amends Section 45.12 of S.L. 2003-284 to delete a reference to Section 45.9, which was repealed.

Section 92. Pages 58-59.

- Amends Section 46.1 of S.L. 2003-284 to allow Repair and Renovation COPS funds to be used in accordance with Section 31.5 of that act, which provides that 46% of the funds shall be allocated to UNC and 54% shall be allocated to the Office of State Budget and Management for repairs and renovations.

Section 93. Page 59.

- Corrects an incorrect reference in the lead-in provisions of Section 46.2 of S.L. 2003-284, 2003 Budget Bill.

Section 94. Pages 59-60.

- S.L. 2003-300 provides assistance to military personnel called to active duty in support of Operation Iraqi Freedom on or after January 1, 2003, by allowing the Governor to extend for up to 90 days the validity of an occupational license and to allow for the prorating of any renewal fee associated with an occupational license. The act refers to the definition of "occupational license" as defined in G.S. 93B-1. Although that definition does not specifically preclude occupational licenses issued by State agencies, such as a license to sell insurance, the term "occupational licensing board" in G.S. 93B-1 specifically excludes State agencies. This section clarifies that the authority of the Governor to extend the validity of occupational licenses for deployed military personnel includes occupational licenses issued by a State agency. It does so by setting out the definition of an occupational license rather than referring to Chapter 93B of the General Statutes.

Section 95. Page 60.

- Resolves a conflict where the same statute was amended by two different bills by recodifying the statute as amended by the second bill.

Section 96. Page 60.

- The Senate concurred in Senate Bill 236 on July 14th. If Senate Bill 236 becomes law, Section 9 of the act directs the Revenue Laws Study Committee to establish a study group composed of State tax professionals from accounting firms and

representatives of the Department of Revenue to work together on gathering appropriate data to conduct an analysis of the potential revenue impact of modifying the corporate income tax law to require consolidated returns. In an earlier version of the bill, Section 9 had required certain information to be included with corporate tax returns for the 2003 and 2004 tax years. The effective date of Section 9 in Senate Bill 236 continues to reflect these two taxable years. Section 9 needs to become effective when it becomes law and this section of the technical bill makes that change.

Section 97. Page 60.

- Amends G.S. 50B-3.1(h), created in SB 919, which has been ratified. The bill allows the judge to dispose of firearms under several sections of the law. It then goes on to state that "If a sale occurs . . .." However, the sections in the bill don't allow for a sale. However (again), some counties are exempt from the provisions of the statute (under other circumstances, not domestic violence cases), and the Sheriffs are allowed to hold sales of confiscated firearms. This amendment should take care of those counties, and also keep the designated statute sections applicable to the rest of the counties.

Section 98. Page 60.

- Changes all statutory references and session law references to "Public Campaign Financing Fund" to "Judicial Elections Fund" in the election laws.

Section 99. Pages 60-61.

- Authorized the proceeds from the sale of the chancellor's residence at Fayetteville State University to be retained by FSU and used for the construction of a new chancellor's residence.

Section 100. Pages 61-62.

- Provides that if the new State House and State Senate redistricting plans are somehow still legally pending (not finally approved by the US Justice Department under Section 5 of the Voting Rights Act on the day the candidate filing period begins February 9, 2004, the State Board of Elections is to postpone the May 4 primary till a later time. The Board would be required to move the filing period and primary for all local, State, and congressional offices together, so that there would be one filing period and primary for them all. The Board could not do away with the 2nd primary.

Section 101.

EFFECTIVE DATE: Unless otherwise provided, the act is effective when it becomes law.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 15, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 281	Technical Corrections Act.	Representative Culpepper, III
~~HB 1114~~	School Volunteer Records are Confidential.	Representative Saunders

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

July 15, 2003 p.m.

Minutes

Senator Dana Clodfelter, Chair called the meeting to order at 4:14 p.m. with eleven members present. He introduced Pages, Molly Massey from Washington, NC, Ashley Howell from Plymouth, NC and Sam Hege from Raleigh, NC.

HB-281 (Technical Corrections Act) Committee Substitute was reintroduced by Senator Clodfelter. Senator Phillip Berger's Amendment (#1) was offered for adoption. All members voted yes. Motion carried. Senator R.C. Soles offered Amendment (#2) for adoption. All members voted yes. Motion carried. Senator Tony Rand offered Amendment (#3) for adoption. All members voted yes. Motion carried. Senator Wib Gulley offered Amendment (#4) for adoption. All members voted yes. Motion carried. Senator Tony Rand offered Amendment (#5) for adoption. All members voted yes. Motion carried. Senator Rand offered Amendment (#6) for adoption. All members voted yes. Motion carried. Senator Linda Garrou offered Amendment (#7) for adoption. All members voted yes. Motion carried. Senator Phillip Berger offered Amendment (#8) for adoption. All members voted yes. Motion carried. Senator Jeanne Lucas offered Amendment (#9) for adoption. All members voted yes. Motion carried. Senator Steve Metcalf offered Amendment (#10) for adoption. All members voted yes. Motion carried. See attached Amendments. Senator Fletcher Hartsell spoke on the bill explaining the bond issue. Senator's Ham Horton, Jeanne Lucas, Tony Rand, and Phillip Berger had questions. Ms. Pam Best, Administrative Officer AOC spoke on the bill and answered questions. Staff Attorney, Ms. Lisa Hallowell, Senator Walter Dalton and Mr. Evan Roderwall, Fiscal Research Department spoke on the bill and answered questions. Senator Tony Rand offered Amendment (#11) for adoption. All members voted yes. Motion carried. Senator Linda Garrou offered Amendment (#12) for adoption. All members voted yes. Motion carried. Senator Garrou offered Amendment (#13) for adoption. All members voted yes. Motion carried. Senator Clodfelter asked for questions. Senator Rand had a question.. Mr. Bill Hale NC Insurance Group spoke on the bill. Senator Clodfelter asked for a motion to engross all Amendments into the bill. Senator Wib Gulley moved to engross Amendments. All members voted yes. Motion carried. Senator Gulley moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 5:01 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 15, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **281** Technical Corrections Act.

Draft Number:	PCS 60391
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 281

Committee Substitute Favorable 4/23/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H281-PCS60391-RH-53

Short Title: Technical Corrections Act. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 14-402(c)(3) reads as rewritten:

"(c) The following definitions apply in this section:

...

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This ~~devise~~ device is mechanically held at full or partial draw and released by a trigger or similar mechanism ~~which~~ that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

..."

SECTION 2. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. – To obtain ~~a~~ an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence

address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's valid social security number.
(6) The applicant's signature.

If an applicant does not have a valid social security number and is ineligible to obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service to that person.

The Division shall not issue an identification card, learners permit, or drivers license to an applicant who fails to provide either the applicant's valid social security number or the applicant's valid Individual Taxpayer Identification Number."

SECTION 3. G.S. 49-13.1 is repealed.

SECTION 4. G.S. 55B-2(6), as amended by Section 3 of S.L. 2003-117, reads as rewritten:

"(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18C, "Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to ~~Certified~~ Licensed Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act."

SECTION 5.(a) G.S. 58-36-10(3) reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards shall apply to the making and use of rates:

...

(3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.

..."

SECTION 5.(b) G.S. 58-40-25(4) reads as rewritten:

"**§ 58-40-25. Rating methods.**

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

...

(4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply."

SECTION 5.(c) G.S. 58-87-1(b) reads as rewritten:

"(b) A fire department is eligible for a grant under this section if it meets all of the following conditions:

(1) It serves a response area of 6,000 or less in population.

(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.

(3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1) of this subsection, the Department shall use the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(d) G.S. 105-113.82(e) reads as rewritten:

"(e) Population Estimates. – To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(e) G.S. 105-129.3(b1) reads as rewritten:

"(b1) Data. – In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(f) G.S. 105-129.3A(a) reads as rewritten:

"(a) Development Zone Defined. – A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce."

SECTION 5.(g) G.S. 105-164.44F(b) reads as rewritten:

"(b) Share of Cities Incorporated on or After January 1, 2001. – The share of a city incorporated on or after January 1, 2001, is its per capita share of the amount to be distributed to all cities incorporated on or after this date. This amount is the proportion of the total to be distributed under this section that is the same as the proportion of the population of cities incorporated on or after January 1, 2001, compared to the population of all cities. In making the distribution under this subsection, the Secretary must use the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer."

SECTION 5.(h) G.S. 105-187.19(b) reads as rewritten:

"(b) Each quarter, the Secretary shall credit five percent (5%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty-seven percent (27%) of the net tax proceeds to the Scrap Tire Disposal Account. The Secretary shall distribute the remaining sixty-eight percent (68%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer."

SECTION 5.(i) G.S. 105-187.24 reads as rewritten:

"**§ 105-187.24. Use of tax proceeds.**

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

SECTION 5.(j) Effective July 1, 2003, G.S. 105-472(b) reads as rewritten:

"(b) Distribution Between Counties and Cities. – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State ~~Planning~~ Budget Officer.

(2) Ad Valorem Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly

distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year."

SECTION 5.(k) G.S. 136-202(c) reads as rewritten:

"(c) The Department, the metropolitan planning organizations, and the Department of Environment and Natural Resources shall jointly evaluate and adjust the regions defined in each regional travel demand model at least once every five years and no later than October 1 of the year following each decennial federal census. The evaluation and adjustment shall be based on decennial census data and the most recent populations estimates certified by the State ~~Planning~~ Budget Officer. The adjustment of these boundaries shall reflect current and projected patterns of population, employment, travel, congestion, commuting, and public transportation use and the effects of these patterns on air quality."

SECTION 5.(l) G.S. 143-215.107A(d) reads as rewritten:

"(d) Additional Counties. – The Commission may require that motor vehicle emissions inspections be performed in counties in addition to those set out in subsection (c) of this section. In determining whether to require that motor vehicle emissions inspections be performed in a county, the Commission may consider the population of, and distribution of population in, the county; the projected change in population of, and distribution of population in, the county; the number of vehicles registered in the county; the projected change in the number of vehicles registered in the county; vehicle miles traveled in the county; the projected change in vehicle miles traveled in the county; current and projected commuting patterns in the county; and the current and projected impact of these factors on attainment of air quality standards in the county and in areas outside the county. The Commission may not require that motor vehicle emissions inspections be performed in any county with a population of less than 40,000 based on the most recent population estimates prepared by the State ~~Planning~~ Budget

Officer. The Commission may not require that motor vehicle emissions inspections be performed in any county in which the number of vehicle miles traveled per day is less than 900,000, based on the most recent estimates prepared by the Department of Transportation. In order to disapprove a rule that requires that motor vehicle emissions inspections be performed in one or more additional counties, a bill introduced pursuant to G.S. 150B-21.3(b) must amend subsection (c) of this section to add one or more other counties in which the total population and vehicle miles traveled per day equal or exceed the total population and vehicle miles traveled in the county or counties listed in the rule that the bill would disapprove."

SECTION 5.(m) G.S. 160A-536(c) reads as rewritten:

"(c) Urban Area Revitalization Defined. – As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State ~~Planning~~ Budget Officer and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.

(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.

(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.

(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities."

SECTION 5.(n) G.S. 162A-6(a)(14d) reads as rewritten:

"(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority is authorized and empowered:

...

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the

authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

..."

SECTION 6. G.S. 78A-17 reads as rewritten:

"**§ 78A-17. Exempt transactions.**

Except as otherwise provided in this Chapter, the following transactions are exempted from G.S. 78A-24 and G.S. 78A-49(d):

(1) Any isolated nonissuer transaction, whether effected through a dealer or ~~not;~~not.

(2) Any nonissuer distribution other than by a controlling person of an outstanding security if

a. A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

b. A registered dealer files with the Administrator such information relating to the issuer as the Administrator may by rule or order require, or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the ~~security;~~security.

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy; but the Administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the dealer for a specified ~~period;~~period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among ~~underwriters;~~underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a lien or security interest in real or personal property, or by an agreement for the sale of real estate or chattels, if the entire security interest or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a ~~unit;~~unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or ~~conservator;~~conservator.

(7) Any transaction executed by a person holding a bona fide security interest without any purpose of evading this ~~Chapter;~~Chapter.

(8) Any offer or sale to an entity which has a net worth in excess of one million dollars ($1,000,000) as determined by generally accepted accounting principles, bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary ~~capacity;~~capacity.

(9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security transaction. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required.

(10) Any offer or sale of a preorganizational certificate or subscription if: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; (ii) no public advertising or solicitation is used in connection with the offer or sale; (iii) the number of subscribers does not exceed 10 and the number of offerees does not exceed 25; and (iv) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or (ii) the issuer first files a notice specifying the terms of the offer and the Administrator does not by

order disallow the exemption within the next 10 full business ~~days;~~days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this Chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either ~~act;~~act.

(13) Any offer or sale by a domestic entity of its own securities if (i) the entity was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (ii) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, (iii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iv) the ~~corporation~~ entity is both organized and operated principally to promote some community, industrial, or agricultural development that confers a public benefit rather than organized and operated principally to generate a pecuniary ~~profit;~~profit.

(14) Any offer, sale or issuance of securities pursuant to an employees' stock or equity purchase, option, savings, pension, profit-sharing, or other similar benefit plan that is exempt under the provisions of ~~G.S. 78A-16(11);~~G.S. 78A-16(11).

..."

SECTION 7. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.

(3) A crime involving fraud or moral turpitude by conviction thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.

(5) False or misleading advertising.

(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, ~~adopted~~ or the

standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation."

SECTION 8. G.S. 96-4(t)(2) reads as rewritten:

"(t) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government.

...

(2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Commission have agreed upon in writing. (ii) The Employment Service Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information Division shall collect, collate, and publish statistical and other information relating to the work under the Commission's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Commission's opinion may make further legislation desirable. (iv) Except as provided by Commission regulation, any information published pursuant to this ~~subsection (II)~~ subdivision shall not be published in any manner revealing the identity of the applicant or the employing unit.

..."

SECTION 9. G.S. 110-136.13(a) reads as rewritten:

"(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and ~~110-14,~~ 110-136.14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act."

SECTION 10. G.S. 143-129.8(b) reads as rewritten:

"(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with ~~G.S. 143-129(a).~~G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals."

SECTION 11. G.S. 147-69 reads as rewritten:

"**§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.**

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon ~~his~~ the Auditor's request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in ~~his~~ the Treasurer's office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which ~~he~~ the Treasurer may deposit or cause to be deposited any of the public funds, and ~~such~~ these accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing ~~his~~ the Treasurer's official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing ~~his~~ the Treasurer's signature to warrants, checks or any other instrument ~~he~~ the Treasurer is required by law to sign. The Commissioner of ~~Banks and~~ Banks, the bank examiners, and ~~the Commissioner of Banks and~~ the savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all ~~such~~ these depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for ~~such deposit.~~these deposits."

SECTION 12.(a) G.S. 163-278.39B is recodified as G.S. 163-278.38Z under Part 1A of Article 22A of Chapter 163 of the General Statutes, so that the recodified section appears as the first section in Part 1A.

SECTION 12.(b) G.S. 163-278.6 reads as rewritten:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of 'radio' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

...

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received

funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of 'candidate' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of 'print media,' 'radio,' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

...

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the

presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of 'political action committee' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of 'political party organization' that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

..."

SECTION 13.(a) Section 1 of S.L. 2001-37 is repealed.

SECTION 13.(b) S.L. 2001-37 is amended by adding a new section to read:

"**SECTION 1.1.** G.S. 160A-58.1(b)(5) does not apply to the Cities of Marion, Oxford, and Rockingham and the Towns of Calabash, Catawba, Dallas, Godwin, Louisburg, Mocksville, Pembroke, Rutherfordton, and Waynesville."

SECTION 13.(c) G.S. 160-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Hickory, Marion, Mount Airy, New Bern, Newton, Oxford, Rockingham, Sanford, Salisbury, Southport, and Statesville, and the Towns of Calabash, Catawba, Dallas, Godwin, Kenly, Louisburg, Maiden, Midland, Mocksville, Mooresville, Pembroke, Rutherfordton, Swansboro, ~~and Warsaw.~~ Warsaw, and Waynesville."

SECTION 13.(d) G.S. 160A-58.1(b1) is repealed.

PART II. OTHER CHANGES

SECTION 14. G.S. 1-44.2(b) reads as rewritten:

"(b) ~~Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership.~~ The presumption established by this section is rebuttable by showing that a party has good and valid title to the land."

SECTION 15.(a) G.S. 1-47(1) reads as rewritten:

"**§ 1-47. Ten years.**

Within ten years an action –

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its ~~rendition.~~ entry. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

..."

SECTION 15.(b) G.S. 1-52(8) reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action –

...

(8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the ~~rendition~~ entry of the judgment, or the issuing of the last execution thereon.

..."

SECTION 16. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. ~~Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in ~~§ 7A-32.~~G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 17. G.S. 7B-808(b), as enacted by Section 2 of S.L. 2003-140, reads as rewritten:

"(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation ~~of a juvenile~~ under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs."

SECTION 18. The catch line of G.S. 8-53.5 reads as rewritten:

"**§ 8-53.5. Communications between licensed marital and family therapist and client(s).**"

SECTION 19.(a) G.S. 14-202.4, as amended by Section 2 of S.L. 2003-98, reads as rewritten:

"**§ 14-202.4. Taking indecent liberties with a student.**

(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. ~~The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.~~ A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.

(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school."

SECTION 19.(b) This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SECTION 20. G.S. 14-298 reads as rewritten:

"**§ 14-298. Gaming tables, illegal punchboards, slot machines, and prohibited video game machines to be destroyed by police officers.**

All sheriffs and law enforcement officers ~~of police are hereby authorized and directed, on information made to them on oath~~ upon a determination that probable cause exists to believe that any gaming table prohibited to be used by G.S. 14-289 through G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine prohibited to be used by G.S. 14-306 or G.S. 14-306.1, is in the possession or use of any person within the limits of their jurisdiction, ~~to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction.~~are hereby authorized to seize the item in accordance with applicable State and federal law. Any law enforcement agency in possession of that item shall retain the item pending a disposition order from a district or superior court judge. Upon application by the law enforcement agency, district attorney, or owner, and after notice and opportunity to be heard by all parties, if the court determines that the item is unlawful to possess, it shall enter an order releasing the item to the law enforcement agency for destruction or for training purposes. If the court determines that the item is

not unlawful to possess and will not be used in violation of the law, the item shall be ordered released to its owner upon satisfactory proof of ownership. The foregoing procedures for release shall not apply, however, with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment."

SECTION 21. G.S. 14-401.5 is repealed.

SECTION 22. G.S. 15-190 reads as rewritten:

"**§ 15-190. Person or persons to be designated by warden to execute sentence; supervision of execution; who shall be present.**

Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in the warden's place, and the surgeon or physician of the penitentiary. Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or member of the clergy or religious leader of the person's choosing may be present if they so desire. The names of persons designated to carry out the execution shall be confidential and exempted under Chapter 132 of the General Statutes and are not subject to discovery or introduction as evidence in any proceeding. The Senior Resident Superior Court Judge for Wake County may compel disclosure of names made confidential by this section after making findings that support a conclusion that disclosure is necessary to a proper administration of justice."

SECTION 23. G.S. 18B-600(f), as amended by Section 1 of S.L. 2003-218, reads as rewritten:

"(f) Township Elections. — An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

~~(3) A county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than twenty percent (20%) of the total county population as of the most recent federal census.~~

An election may be called on any of the propositions listed in G.S. 18B-602(a), (d), and (h) in any township located within a county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than twenty percent (20%) of the total county population as of the most recent federal census. In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B-602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

For purposes of this subsection, the name and boundary of a township is as it is shown on the Redistricting Census 2000 TIGER Files with modifications made by the Legislative Services Office on its computer database as of May 1, 2001.

In any township election held under this subsection, the area within any incorporated municipality is excluded, and no permits may be issued under this subsection in any excluded area.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages."

SECTION 24. G.S. 18B-1006(j)(4) is repealed.

SECTION 25. G.S. 18B-1006(m) reads as rewritten:

"(m) Interstate Interchange Economic Development Zones. –

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

b. Operates ABC stores;

c. Borders on another state; and

d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

a. Located within one mile of any interstate highway interchange in that county.

b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).

~~(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:~~

~~a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.~~

~~b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.~~

~~c. Operates ABC stores.~~

~~d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.~~

~~This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection.~~"

SECTION 26. G.S. 30-3.6(c), as enacted by Section 5 of S.L. 2003-296, reads as rewritten:

"(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of ~~decedent's~~ decedents dying on or after January 1, 2001."

SECTION 27. G.S. 35A-1213(b) reads as rewritten:

"(b) ~~An individual appointed as general guardian or guardian of the estate must be a resident of the State of North Carolina.~~ A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the ~~person~~ person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by

and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk may require a nonresident guardian to post a bond or other security for the faithful performance of the guardian's duties."

SECTION 28.(a) G.S.40A-3(b) reads as rewritten:

"(b) ~~Local Public Condemnors.~~Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter."

SECTION 28.(b) G.S. 40A-3(b1), as amended by Section 1 of S.L. 2003-282, reads as rewritten:

"(b1) ~~Local Public Condemnors.~~Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island."

SECTION 29. G.S. 40A-42(a), as amended by Section 2 of S.L. 2003-282, reads as rewritten:

"(a) (1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

(2) Modified Provision for Certain Localities. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b1)(1), (4), (7), (10), or (11), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island."

SECTION 30.(a) G.S. 48-2-206(c) reads as rewritten:

"(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the ~~minor.~~minor or to participate in the adoption proceeding."

SECTION 30.(b) G.S. 48-2-206(d) reads as rewritten:

"(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

"To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding."

SECTION 30.(c) Part 2 of Article 2 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"**§ 48-2-207. Postpetition determination of necessity of consent.**

(a) If any individual described in G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.

(b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required for any of the following individuals:

(1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S.

48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.

(2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.

(c) If the court determines that the consent of any individual is required, the adoption cannot proceed until that individual's consent is obtained or that individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that the individual's consent is required does not entitle that individual to physical custody of the minor.

(d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, that individual is not entitled to receive notice of, or to participate in, further proceedings in the adoption."

SECTION 30.(d) G.S. 48-2-304(c) reads as rewritten:

"(c) A petition to adopt a minor under Article 3 of this Chapter shall also ~~state:~~state all of the following:

(1) A description of the source of placement and the date of placement of the adoptee with the ~~petitioner; and~~petitioner.

(2) That the provisions of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, were followed if the adoptee was brought into this State from another state for purposes of ~~adoption.~~adoption, or that a statement is attached describing the circumstances of any noncompliance."

SECTION 30.(e) G.S. 48-2-305(7) reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

...

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State.~~State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.

...

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 30.(f) G.S. 48-2-401(b) reads as rewritten:

"(b) In all adoptions, the petitioner shall serve notice of the filing ~~on:~~on each of the following:

(1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this ~~Chapter;~~Chapter.

(2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be ~~waived;~~waived, provided the court for cause may waive this notice requirement.

(3) Any individual who has executed a consent or relinquishment, but who the petitioner has actually been informed has filed an action to set it aside for fraud or ~~duress; and~~duress.

(4) Any other person designated by the court who can provide information relevant to the proposed adoption."

SECTION 30.(g) G.S. 48-2-401(c) reads as rewritten:

"(c) In the adoption of a minor, the petitioner shall also serve notice of the filing ~~on:~~on each of the following:

(1) A minor whose consent is dispensed with under ~~G.S. 48-3-603(b)(2);~~G.S. 48-3-603(b)(2).

(2) Any agency that placed the ~~adoptee;~~adoptee.

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, or a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent; and~~parent, or provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

(4) Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with the minor under an existing court order issued by a court in this State or another state."

SECTION 30.(h) G.S. 48-2-405 reads as rewritten:

"**§ 48-2-405. Rights of persons entitled to notice.**

~~A~~ Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee."

SECTION 31.(a) G.S. 54B-266(1) is repealed.

SECTION 31.(b) G.S. 54C-200(1) is repealed.

SECTION 32. G.S. 58-64-33(a), as amended by Section 8 of S.L. 2003-193, reads as rewritten:

"(a) A provider shall maintain after the opening of a facility: an operating reserve equal to fifty percent (50%) of the total operating costs of the facility forecasted for the 12-month period following the period covered by the most recent disclosure statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total

operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. If a facility maintains an occupancy level in excess of ninety percent (90%), a provider shall only be required to maintain a twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserve ~~must~~ may be funded by cash, by ~~cash equivalents,~~ invested cash, or by investment grade securities, including bonds, stocks, U.S. Treasury obligations, or obligations of U.S. government agencies."

SECTION 33.(a) G.S. 62-3(23) reads as rewritten:

"(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

...

i. The term "public utility" shall not include the State, the Office of ~~the State Controller,~~ Information Technology, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

...."

SECTION 33.(b) G.S. 147-33.92 reads as rewritten:

"**§ 147-33.92. Telecommunications services for local governmental ~~units~~ entities and other entities.**

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental ~~units~~ entities with access to a central telecommunications system or service established under G.S. 147-33.91 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State Chief Information Officer shall establish switched broadband telecommunications services and ~~permit~~permit, in addition to State agencies, cities, counties, and other local government ~~units,~~ entities, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.

(2) MCNC.

(3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.

(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, ~~47 U.S.C. § 153(h).~~ 47 U.S.C. § 153(10). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer."

SECTION 34. Article 4 of Chapter 72 of the General Statutes is repealed.

SECTION 35. G.S. 105-129.6(b) reads as rewritten:

"(b) Reports. – The Department of Revenue shall publish by ~~March 1~~April 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

..."

SECTION 36. G.S. 108A-70.21(d), as amended by Section 10.29(a) of S.L. 2003-284, reads as rewritten:

"(d) Cost-Sharing. – There shall be no deductibles, copayments, or other cost-sharing charges for families covered under the Program whose family income is at or below one hundred fifty percent (150%) of the federal poverty ~~level, except that fees for outpatient prescription drugs are applicable and shall be one dollar ($1.00) for each outpatient generic prescription drug and for each outpatient brand name prescription drug for which there is no generic substitution available. The fee for each outpatient brand name prescription drug for which there is a generic substitution available is three dollars ($3.00).~~ level. Families covered under the Program whose family income is above one hundred fifty percent (150%) of the federal poverty level shall be responsible for copayments to providers as follows:

(1) Five dollars ($5.00) per child for each visit to a provider, except that there shall be no copayment required for well-baby, well-child, or age-appropriate immunization services;

(2) Five dollars ($5.00) per child for each outpatient hospital visit;

(3) A six dollar ($6.00) fee for each outpatient prescription drug purchased; ~~one dollar ($1.00) fee for each outpatient generic prescription drug and for each outpatient brand name prescription drug for which there is no generic substitution available. The fee for each outpatient brand name prescription drug for which there is a generic substitution available is ten dollars ($10.00).~~

(4) Twenty dollars ($20.00) for each emergency room visit unless:

a. The child is admitted to the hospital, or

b. No other reasonable care was available as determined by the Claims Processing Contractor of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

Copayments required under this subsection for prescription drugs apply only to prescription drugs prescribed on an outpatient basis."

SECTION 37.(a) G.S. 110-90(1a), as enacted by Section 34.12(a) of S.L. 2003-284, reads as rewritten:

"The Secretary shall have the following powers and duties under the policies and rules of the Commission:

...

(1a) ~~To establish~~The Secretary shall charge child care centers a nonrefundable annual license-monitoring ~~fee for the licensing of child care centers.~~ fee. The fee does not apply to a religious-sponsored child care center operated pursuant to a letter of compliance. The amount of the fee ~~may not exceed~~shall be the amount listed in this subdivision.

Capacity of Center	~~**Maximum**~~ **Fee**
12 or fewer children	$ 35.00
13-50 children	$125.00
51-100 children	$250.00
101 or more children	$400.00

Failure to pay the license monitoring fee shall result in suspension of a license unless the fee is paid as governed by G.S. 150B-3.

..."

SECTION 37.(b) Section 5.1(p) of S.L. 2003-284, reads as rewritten:

"**SECTION 5.1.(p)** The sum of ~~one million six hundred thousand dollars ($1,600,000)~~two million five hundred fifty thousand dollars ($2,550,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for fiscal year 2003-2004 shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Support the Masters Degree in Social Work/Baccalaureate Degree in Social Work Collaborative.
(3) Provide training for residential child care facilities.
(4) Provide for various other child welfare training initiatives."

SECTION 37.(c) Section 5.1(a) of S.L. 2003-284 is amended by deleting the language 'Division of Social Services – Child Caring Agencies' in item 17 of the SOCIAL SERVICES BLOCK GRANT and substituting 'Transfer from TANF Block Grant for Division of Social Services – Child Caring Agencies' in item 17 of the SOCIAL SERVICES BLOCK GRANT.

SECTION 38. G.S. 110-139.2(b1), as enacted by Section 4 of S.L. 2003-288, reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a delinquent child

support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the delinquency. In order to be able to attach a lien on and levy an obligor's account, the obligor's child support obligation shall be in arrears in an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the arrears amount in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor and the financial institution a notice as provided by this subsection. The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil ~~Procedure and~~ Procedure, except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified arrears amount, information for the obligor on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor to contest the lien, within 10 days after the obligor is served with the notice, the obligor shall send written notice of the basis of the obligor's contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The lien may be contested only on the basis that the arrearage is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), or the obligor is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the delinquent obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State."

SECTION 39. G.S. 114-19.12, as enacted by Section 4 of S.L. 2003-214 is recodified as G.S. 114-19.14, to avoid a conflict with S.L. 2003-182.

SECTION 40. G.S. 115C-84.2(d) reads as rewritten:

"(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. Different opening and closing dates may be fixed for schools in the same administrative unit.

~~Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days.~~"

SECTION 41.(a) G.S. 115C-238.29B(a) reads as rewritten:

"(a) Any person, group of persons, or nonprofit ~~corporation~~ corporation, including a local board of education, seeking to establish a charter school may apply to establish a charter school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion."

SECTION 41.(b) G.S. 115C-238.29E reads as rewritten:

"**§ 115C-238.29E. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its ~~charter.~~charter or if the local board of education was the applicant for the charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the ~~application.~~application unless a local board of education applied for and was granted a charter for the conversion of an existing public school or for the creation of a new charter school. In such a case, a charter school shall be operated by the local board of education or by a board of directors appointed by the local board of education.

(c) A charter school shall operate under the written charter signed by the entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning ~~authority.~~authority unless the local board of education applied for and was granted the charter for the conversion of a public school or the creation of a new charter school. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian

organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit."

SECTION 41.(c) This section applies only to the Winston-Salem/Forsyth School System.

SECTION 42.(a) G.S. 115C-238.29D(d) reads as rewritten:

"(d) The State Board of Education may grant the initial charter for a period not to exceed ~~five~~ 10 years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed ~~five~~ 10 years each. The State Board of Education shall review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

It shall not be considered a material revision of a charter application and shall not require the prior approval of the State Board for a charter school to increase its enrollment during the charter school's second year of operation and annually thereafter (i) by up to ten percent (10%) of the school's previous year's enrollment or (ii) in accordance with planned growth as authorized in the charter. Other enrollment growth shall be considered a material revision of the charter application, and the State Board may approve such additional enrollment growth of greater than ten percent (10%) only if the State Board finds that:

(1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment;

(2) The charter school has commitments for ninety percent (90%) of the requested maximum growth;

(3) The board of education of the local school administrative unit in which the charter school is located has had an opportunity to be heard by the State Board of Education on any adverse impact the proposed growth would have on the unit's ability to provide a sound basic education to its students;

(4) The charter school is not currently identified as low-performing;
(5) The charter school meets generally accepted standards of fiscal management; and
(6) It is otherwise appropriate to approve the enrollment growth."

SECTION 42.(b) G.S. 115C-238.29F(e)(1) reads as rewritten:

"(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. All teachers in grades six through 12 who are teaching in the core subject areas of mathematics, science, social studies, and language arts shall be college graduates.

The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees."

SECTION 42.(c) This section is effective when it becomes law. Subsection (a) of this section applies to charters granted or renewed on or after that date. Subsection (b) of this section applies to persons employed by charter schools for the 2003-2004 and subsequent school years.

SECTION 43. G.S. 115C-437 reads as rewritten:

"**§ 115C-437. Allocation of revenues to the local school administrative unit by the county.**

(a) Revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7, of the Constitution and taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511 shall be remitted to the school finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, Sec. 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount ~~collected.~~ collected, except as provided in subsection (b) of this section.

Revenues appropriated to the local school administrative unit by the board of county commissioners from general county revenues shall be made available to the school finance officer by such procedures as may be mutually agreeable to the board of education and the board of county commissioners, but if no such agreement is reached, these funds shall be remitted to the school finance officer by the county finance officer in monthly installments sufficient to meet its lawful expenditures from the county

appropriation until the county appropriation to the local school administrative unit is exhausted. Each installment shall be paid not later than 10 days after the close of each calendar month. When revenue has been appropriated to the local school administrative unit by the board of county commissioners from funds which carry specific restrictions binding upon the county as recipient, the board of commissioners must inform the local school administrative unit in writing of those restrictions.

(b) The clear proceeds of all penalties, forfeitures, and fines of The University of North Carolina shall be the full amount collected by The University of North Carolina, diminished only by the direct, actual costs of assessing and collecting the penalties, forfeitures, and fines. Those costs shall be itemized in an accounting to be provided when the proceeds are remitted by The University of North Carolina."

SECTION 44. Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding the following new section to read:

"**§ 116-40.7 Internal auditors.**

(a) Internal auditors within The University of North Carolina and its constituent institutions shall provide independent reviews and analyses of various functions and programs within The University of North Carolina that will provide management information to promote accountability, integrity, and efficiency within The University of North Carolina.

(b) An internal auditor shall have access to any records, data, or other information of The University of North Carolina or the relevant constituent institution that the internal auditor believes necessary to carry out the internal auditor's duties.

(c) An internal auditor shall maintain, for 10 years, a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the internal auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of that auditor's office shall be retained in accordance with Chapter 132 of the General Statutes. To promote cooperation and avoid unnecessary duplication of audit effort, audit work papers related to issued audit reports shall be, unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal governments in connection with some matter officially before them. Except as otherwise provided in this subsection, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential and shall not be open to examination or inspection under G.S. 132-6. Audit reports shall be public records to the extent that they do not include information that, under State laws, is confidential and exempt from Chapter 132 of the General Statutes or would compromise the security systems of The University of North Carolina."

SECTION 45. G.S. 116-238.1, as enacted by S.L. 2003-284, is amended by adding a new subsection to read:

"(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of tuition of the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of tuition at the constituent institution for which the tuition grant is awarded, then the

amount of the tuition grant shall be reduced by an appropriate amount determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of tuition received by the student, including the tuition grant under this section, shall not exceed the cost of tuition for the constituent institution at which the student is enrolled."

SECTION 46. G.S. 116-243, as rewritten by Section 1 of S.L. 2003-102, reads as rewritten:

"**§ 116-243. Board of directors established; appointments.**

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year ~~terms;~~terms.

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year ~~terms;~~terms.

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year ~~terms;~~terms.

(4) The President of The University of North Carolina or ~~his~~ the President's designee to serve ex ~~officio;~~officio.

(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex ~~officio;~~officio.

(6) The President of Western North Carolina Arboretum, Inc., to serve ex ~~officio;~~officio.

(7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden ~~clubs;~~clubs.

(8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least one year. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments

made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors."

SECTION 47.(a) The title of Article 6 of Chapter 120 of the General Statutes reads as rewritten:

"Article 6.

~~Acts and Journals.~~Acts, Journals, and Reports to the General Assembly."

SECTION 47.(b) Article 6 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-29.5. State agency reports to the General Assembly.**

Whenever a report is directed by law or resolution to be made to the General Assembly, the State agency preparing the report shall deliver one copy of the report to each of the following officers: the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the House Principal Clerk, and the Senate Principal Clerk; and two copies of the report to the Legislative Library. The State agency is encouraged to inform members of the General Assembly that an electronic copy is available. This section does not affect any responsibilities for depositing documents with the State Library or the State Publications Clearinghouse under Chapter 125 of the General Statutes."

SECTION 47.(c) This section becomes effective October 1, 2003.

SECTION 48.(a) G.S. 120-47.2(d) reads as rewritten:

"(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the ~~State~~ Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses."

SECTION 48.(b) G.S. 143-47.7(a) reads as rewritten:

"(a) Within 60 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of such appointment with the Governor, the Secretary of State, the ~~State~~ Legislative Library, the State Library, and the State Controller. For the purposes of this section, a copy of the letter from the appointing authority or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if such copy contains the information required in subsection (b) of this section."

SECTION 48.(c) G.S. 147-16.2 reads as rewritten:

"**§ 147-16.2. Duration of boards and councils created by executive officials; extensions.**

(a) Any executive order of the Governor that creates a board, committee, council, or commission expires two years after the effective date of the executive order, unless the Governor specifies an expiration date in the order; provided, however, that any such executive order that was in effect on July 1, 1983, expires on June 30, 1985, unless the Governor specified a different expiration date in any such order. The Governor may

extend any such executive order before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the Governor with the Secretary of State and the ~~State~~ Legislative Library.

(b) Any other State board, committee, council, or commission created by the Governor or by any other State elective officer specified in Article III of the North Carolina Constitution expires two years after it was created; provided, however, that any such board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The elective officer creating any such board, committee, council, or commission may extend the board, committee, council, or commission before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the elective officer with the Secretary of State and the ~~State~~ Legislative Library.

(c) Any State board, committee, council, or commission created by any official in the executive branch of State government, other than by those officials specified in subsections (a) and ~~(b),~~ (b) of this section, expires two years after it was created; provided, however, that any board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The Governor may extend any such board, committee, council, or commission before it expires for additional periods of up to two years by executive order; copies of the executive order shall be filed by the Governor with the Secretary of State and the ~~State~~ Legislative Library.

The words, "official in the executive branch of State government," as used in this section, do not include officials of counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivision, or local boards of education, other local public districts, units or bodies of any kind, or community colleges as defined in G.S. 115D- 2(2), or private corporations created by act of the General Assembly.

(d) Any elective officer specified in subsection (b) of this section and any other official in the executive branch of State government who creates a board, committee, council, or commission shall do so in writing and shall file copies of the writing with the Secretary of State and the ~~State~~ Legislative Library."

SECTION 49. G.S. 121-4(16) is repealed.

SECTION 50.(a) G.S. 131E-155 reads as rewritten:

"**§ 131E-155. Definitions.**

As used in this Article, unless otherwise specified:

...

(7) "Emergency medical services personnel" means all the personnel defined in subdivisions (5), (7a), (8), (9), (10), (11), (12), (13), (14), and (15) of this section.

(7a) "Emergency medical services instructor" means an individual who has completed educational requirements approved by the Department and has been credentialed as an emergency medical services instructor by the Department.

(8) "Emergency medical services-nurse practitioner" means a registered nurse who is licensed to practice nursing in North Carolina and approved to perform medical acts by the North Carolina Medical Board and the North Carolina Board of Nursing and credentialed by the Office of Emergency Medical Services to issue instructions to ~~ALS professionals~~ EMS personnel in accordance with protocols approved by the ~~sponsor hospital~~ EMS system and under the direction of the medical director.

(9) "Emergency medical services-physician assistant" means a physician assistant who has been licensed by the North Carolina Medical Board and approved by the Office of Emergency Medical Services to issue instructions to ~~ALS professionals~~ EMS personnel in accordance with protocols approved by the ~~sponsor hospital~~ EMS system and under the direction of the medical director.

...

(16a) "Emergency Medical Services Peer Review Committee" means a panel composed of EMS program representatives to be responsible for analyzing patient care data and outcome measures to evaluate the ongoing quality of patient care, system performance, and medical direction within the EMS system. The committee membership shall include, but not be limited to, physicians, nurses, EMS personnel, medical facility personnel, and county government officials. Review of medical records by the EMS Peer Review Committee is confidential and protected under G.S. 143-518.

..."

SECTION 50.(b) G.S. 131E-159 reads as rewritten:

"**§ 131E-159. Credentialing requirements.**

(a) ~~An individual seeking credentials as an emergency medical technician, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, mobile intensive care nurse, emergency medical services-physician assistant, or emergency medical services-nurse practitioner medical responder~~ Individuals seeking credentials as EMS personnel shall apply to the Department using forms prescribed by that agency. The Department's representatives shall examine the applicant by either written, practical, or written and practical examination. The Department shall issue appropriate credentials to the applicant who meets all the requirements set forth in this Article and the rules adopted for this Article and who successfully completes the examinations required for credentialing. ~~Emergency medical technician, medical responder, emergency medical dispatcher, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, mobile intensive care nurse, emergency medical services-physician assistant, and emergency medical services-nurse practitioner~~ EMS personnel credentials shall be valid for a period not to exceed four years and may be renewed if the holder meets the requirements set forth in the rules of the Commission. The Department is authorized to revoke or suspend these

credentials at any time it determines that the holder no longer meets the qualifications prescribed.

(b) The Commission shall adopt rules setting forth the qualifications required for credentialing of ~~medical responders, emergency medical technicians, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, emergency medical dispatcher, mobile intensive care nurse, emergency medical services-physician assistant, and emergency medical services-nurse practitioner.~~EMS personnel.

(c) ~~An individual currently credentialed as an emergency medical technician, emergency medical technician-defibrillation, emergency medical technician-intermediate, and emergency medical technician-paramedic~~ EMS personnel currently credentialed by the National Registry of Emergency Medical Technicians or by another state where the education/credentialing requirements have been approved for legal recognition by the Department of Health and Human Services, in accordance with rules promulgated by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with a permitted EMS provider offering service within North Carolina, may be eligible for credentialing as an emergency medical technician without examination. This credentialing shall be valid for a period not to exceed the length of the ~~emergency medical technician-defibrillation, emergency medical technician-intermediate, and emergency medical technician-paramedic~~ applicant's original credentialing or four years, whichever is less.

(d) An individual currently credentialed as an emergency medical dispatcher by a national credentialing agency, or by another state where the education/credentialing requirements have been approved for legal recognition by the Department of Health and Human Services, in accordance with rules issued by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with an emergency medical dispatcher program approved by the Department of Health and Human Services offering service within North Carolina, may be eligible for credentialing as an emergency medical dispatcher without examination. This credentialing shall be valid for a period not to exceed the length of the applicant's original credentialing or four years, whichever is less.

(e) Duly authorized representatives of the Department may issue temporary credentials with or without examination upon finding that this action will be in the public interest. Temporary credentials shall be valid for a period not exceeding 90 days.

(f) The Department may deny, suspend, amend, or revoke the credentials of ~~a medical responder, emergency medical technician, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-paramedic, emergency medical dispatcher, emergency medical services-physician assistant, emergency medical services-nurse practitioner, or mobile intensive care nurse~~ EMS personnel in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules issued under this Article. Prior to implementation of any of the above disciplinary actions, the Department shall consider the recommendations of the EMS Disciplinary Committee pursuant to G.S. 143-519. The Department's decision to deny, suspend,

amend, or revoke credentials may be appealed by the applicant or credentialed personnel pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 50.(c) G.S. 131E-162 reads as rewritten:

"**§ 131E-162. Statewide trauma system.**

The Department shall establish and maintain a program for the development of a statewide trauma system. The Department shall consolidate all State functions relating to trauma systems, both regulatory and developmental, under the auspices of this program.

The Commission shall adopt rules to carry out the purpose of this Article. These rules shall be adopted with the advice of the State Emergency Medical Services Advisory Council and shall include the operation of a statewide trauma registry, statewide educational requirements fundamental to the implementation of the trauma system. The rules adopted by the Commission shall establish guidelines for monitoring and evaluating the system including standards and criteria for the denial, suspension, voluntary withdrawal, or revocation of credentials for trauma center ~~designation.~~ designation, and the establishment of regional trauma peer review committees. Each regional trauma peer review committee shall be responsible for analyzing trauma patient care data and outcome measures to evaluate the ongoing quality of patient care, system performance, and medical direction within the regional trauma system. The committee membership shall include physicians, nurses, EMS personnel, trauma registrars, and hospital administrators. Review of medical records by the Trauma Peer Review Committee is confidential and protected under G.S. 143-518. The rules adopted by the Commission shall avoid duplication of reporting and minimize the cost to hospitals or other persons reporting under this act. The Office of Emergency Medical Services shall be the agency responsible for monitoring system development, ensuring compliance with rules, and overseeing system effectiveness.

With respect to collection of data and educational requirements regarding trauma, rules adopted by the Medical Care Commission shall limit the authority of the Department to hospitals and Emergency Medical Services providers. Nothing in this Article shall be interpreted so as to grant the Department authority to require private physicians, schools, or universities, except those participating in the trauma system, to provide information or data or to conduct educational programs regarding trauma."

SECTION 50.(d) G.S. 143-508 is amended by adding the following subdivision to read:

"(13) Establish occupational standards for EMS systems, EMS educational institutions, and specialty care transport programs."

SECTION 50.(e) G.S. 143-509(9) reads as rewritten:

"**§ 143-509. Powers and duties of Secretary.**

The Secretary of the Department of Health and Human Services has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall accomplish all of the following:

...

(9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to ~~insect stings.~~ agents that might cause anaphylaxis. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Care Commission to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical services training program.

..."

SECTION 50.(f) G.S. 143-518(a)(5) reads as rewritten:

"(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 131E-155, 122C-30, or 131D-21.1."

SECTION 51.(a) G.S. 135-3(8)c. reads as rewritten:

"c. **(Effective until June 30, 2004 – See note)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity, except as a substitute teacher or a part-time tutor, with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a substitute, interim, or permanent basis in a public ~~school.~~school or a

charter school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit or a charter school under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 51.(b) G.S. 115C-325(a)(5a) reads as rewritten:

"(5a) **(Effective until June 30, 2004)** "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any capacity, other than as a substitute teacher or a part-time tutor, with a local board of education or a charter school for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of ~~education,~~education or the charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers."

SECTION 51.(c) This section expires June 30, 2004.

SECTION 52. G.S. 135-40.8(e), as enacted in Section 30.19C.(b) of S.L. 2003-284, reads as rewritten:

"(e) Where qualified out-of-state preferred providers of medical care are not reasonably available in medical emergencies, the Plan pays the amounts covered by subsection (a) of this section. Any amount of charges for services under this section that exceeds the amount allowed by the Plan for the services of qualified preferred providers under this section shall be negotiated between the Plan and the provider of medical services, and the Plan shall ensure that the Plan member is not held financially responsible for the amount of these excess charges. ~~If a Plan member is not capable of making a decision about choosing an in-State qualified preferred provider and emergency services personnel transport the Plan member to a provider outside of the Plan network, then the coverage under this subsection shall apply.~~ This subsection also shall apply if a Plan member has a medical emergency, is not capable of making a decision about choosing an in-State qualified preferred provider, and emergency services personnel transport the Plan member to a provider outside of the Plan network. As used in this section, a 'medical emergency' is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence

of immediate medical care, could imminently result in injury or danger to self or others."

SECTION 53. G.S. 136-179, as amended by Section 29.11(b) of S.L. 2003-284, reads as rewritten:

"**§ 136-179. Projects of Intrastate System funded from Trust Fund.**

Funds allocated from the Trust Fund for the Intrastate System may be used only for the following projects of the Intrastate System:

...

US-74	Complete 4-laning from I-26 to I-85 (including Shelby Bypass)	Polk, ~~Rutherford~~Rutherford, Cleveland

..."

SECTION 54. G.S. 136-180(a), as amended by Section 29.11(a) of S.L. 2003-284, reads as rewritten:

"(a) Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
...		
Greensboro Loop	Multilane facility on new location encircling City of Greensboro including interchanges with Cone Boulevard Extension and ~~Lewis-Fleming~~ Lewiston-Fleming Road Extension	Guilford

..."

SECTION 55.(a) G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

...

(2) Base years. – The first ~~two complete calendar years~~ 24 months following the effective date of an agreement.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State. A 'business' may be a division or smaller operating unit of a business organization if the Committee makes an explicit finding that this designation is necessary to secure the project and develops terms in a Community Economic Development Agreement to ensure that positions or employees of the business or of

a related entity that exist in the State and that are not part of the project are not transferred or shifted to create or fill eligible positions.

..."

SECTION 55.(b) G.S. 143B-437.54(d) reads as rewritten:

"~~(d) Public Notice. The Committee shall do all of the following at least 15 business days prior to the adoption of or amendment to any proposed criteria:~~

~~(1) Publish the proposed criteria on the Department of Commerce's web site.~~

~~(2) Provide notice to persons who have requested notice of proposed criteria.~~

~~(3) Accept oral and written comments on the proposed criteria.~~

(d) Public Notice. – At least 20 business days before the effective date of any criteria or nontechnical amendments to criteria, the Committee must publish the proposed criteria on the Department of Commerce's web site and provide notice to persons who have requested notice of proposed criteria. In addition, the Committee must accept oral and written comments on the proposed criteria during the 15 business days beginning on the first day that the Committee has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

SECTION 56. G.S. 147-33.89, as enacted by S.L. 2003-172, is recodified as G.S. 147-33.90, to avoid a conflict with S.L. 2003-153.

SECTION 57.(a) G.S. 148-22.2, as rewritten by Section 8 of S.L. 2003-13, reads as rewritten:

"**§ 148-22.2. Procedure when surgical operations on inmates are necessary.**

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform an operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of the institution. No operation shall be performed without the consent of the inmate; or, if the inmate is a minor, without the consent of a responsible member of the inmate's family, a guardian, or one having legal custody of the minor; or, if the inmate be non compos mentis, then the consent of a responsible member of the inmate's family or of a guardian shall be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General ~~Statutes and~~ Statutes, ~~G.S. 90-21.13~~G.S. 90-21.13, and ~~G.S. 90-21.14~~.G.S. 90-21.16.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate

non compos mentis, the consent of a responsible member of the inmate's family, guardian, or one having legal custody of the inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this ~~Article,~~ section, the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for the operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed."

SECTION 57.(b) G.S. 148-46.2 reads as rewritten:

"**§ 148-46.2. Procedure when consent is refused by prisoner.**

When the Secretary of Correction finds as a fact that the injury to any prisoner was willfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the chief medical officer of the prison hospital or prison institution shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this ~~Article,~~ section, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. Any treatment of self-inflicted injuries shall also be subject to the provisions of G.S. 90-21.13 and ~~90-21.14.~~G.S. 90-21.16."

SECTION 58. G.S. 148-32.1(a) reads as rewritten:

"(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those inmates committed to the custody of the local confinement facility to serve criminal sentences of 30 days or more. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to an inmate as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the inmate is incarcerated, provided the inmate was using the eyeglasses or devices

at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

In order to obtain reimbursement for any of the expenses authorized by this section, a local confinement facility shall submit an invoice to the Department within one year of the date of commitment by the sentencing court."

SECTION 59.(a) G.S. 150B-21.1(a), as amended by Section 2 of S.L. 2003-229, reads as rewritten:

"(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
a. In accordance with the provisions of G.S. 163-22.2.
b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:
a. Repealed by Session Laws 2000, ch. 148, s. 5, effective July 1, 2002.
b. Repealed by Session Laws 2000, ch. 69, s. 5, effective July 1, 2003.

(13) The need for the Secretary of Transportation to adopt temporary rules concerning the permitted height of mobile and modular homes.

(14) The need for the Secretary of Transportation to adopt temporary rules pursuant to G.S. 113A-11(b) to establish a class of minimum criteria projects.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

(a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of this subsection means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency."

SECTION 59.(b) G.S. 150B-21.1(a1), as enacted by Section 2 of S.L. 2003-229, reads as rewritten:

"~~(a1)~~(a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. The statement must be signed by the head of the agency adopting the temporary rule."

SECTION 59.(c) G.S. 150B-21.1A(a), as enacted by Section 3 of S.L. 2003-229, reads as rewritten:

"(a) Adoption. – An agency may adopt an emergency rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety. When an agency adopts an emergency rule, it must simultaneously commence the process for adopting a temporary rule by submitting the rule to the Codifier of Rules for publication on the Internet in accordance with ~~G.S. 150B-21.1(a1).~~ G.S. 150B-21.1(a2). The Department of Health and Human Services or the appropriate rule-making agency within the Department may adopt emergency rules in accordance with this section when a recent act of the General Assembly or the United States Congress or a recent change in federal regulations authorizes new or increased services or benefits for children and families and the emergency rule is necessary to implement the change in State or federal law."

SECTION 59.(d) G.S. 150B-21.12(c), as amended by Section 10 of S.L. 2003-229, reads as rewritten:

"(c) Changes. – When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in ~~G.S. 150B-21.1(a1)~~ G.S. 150B-21.1(a2) and G.S. 150B-21.1(b)."

SECTION 59.(e) Section 14 of S.L. 2003-229 reads as rewritten:

"**SECTION 14.** Nothing in this act shall be construed to limit or repeal any specific grant of temporary rule-making authority to an agency enacted by the General Assembly prior to the effective date of this act. Any temporary rule adopted after the effective date of this act shall be adopted in accordance with the procedure set forth in G.S. 150B-21.1 as amended by this act."

SECTION 60.(a) In order to reflect the rewrite of G.S. 150B-21.1 by S.L. 2003-229, effective July 1, 2003, G.S. 150B-21.1(a11), as enacted by Section 3 of S.L. 2003-184, is recodified as G.S. 150B-21.1(a)(16) and reads as rewritten:

"(16) ~~Notwithstanding the provisions of subsection (a) of this section, the~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Department shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.~~

~~(2) Accept oral and written comments on the proposed temporary rule.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~"

SECTION 60.(b) This section does not affect the July 1, 2005, expiration of Section 3 of S.L. 2003-184.

SECTION 61.(a) Since G.S. 150B-21.1(a8) expired prior to the effective date of S.L. 2003-229, the Revisor of Statutes shall give no effect to the recodification and amendment of that statute.

SECTION 61.(b) Since G.S. 150B-21.1(a9) expired prior to the effective date of S.L. 2003-229, the Revisor of Statutes shall give no effect to the recodification and amendment of that statute.

SECTION 62.(a) Chapter 152 of the General Statutes is not applicable to Johnston County.

SECTION 62.(b) This section becomes effective upon the expiration of the term of the current coroner in Johnston County.

SECTION 63. G.S. 160A-176.2 reads as rewritten:

"**§ 160A-176.2. Ordinances effective in Atlantic Ocean.**

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Calabash, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle

Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only."

SECTION 64. G.S. 163-34 reads as rewritten:

"**§ 163-34. Power of county board of elections to maintain order.**

Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff ~~or constable~~ to whom the same shall be delivered, or if a sheriff ~~or constable~~ shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment."

SECTION 65. G.S. 163-35(b) reads as rewritten:

"(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive

Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered ~~by the State Board of Elections,~~ after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered ~~by the Board~~ after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of ~~Elections.~~ Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. ~~The State Board of Elections shall notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings.~~ Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection. ~~For the purposes of this subsection, the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.~~"

SECTION 66. G.S. 163-166.12, as enacted in Session Law 2003-226, is amended by adding a new subsection to read:

"(b1) For purposes of this section, if a voter registration applicant, as permitted in G.S. 163-82.6, delegates transporting the application form to another person, the county board of elections shall treat that form as being submitted in the manner it is submitted by the person who accepted the delegation."

SECTION 67.(a) G.S. 163-278.7(b)(7) reads as rewritten:

"(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

...

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

..."

SECTION 67.(b) This section is effective on and after January 1, 2003.

SECTION 68. G.S. 163-278.12A is repealed.

SECTION 69. G.S. 163-278.64(d)(5) reads as rewritten:

"(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act and rules adopted pursuant to it, and similar provisions in other states."

SECTION 70. G.S. 168-2 reads as rewritten:

"**§ 168-2. Right of access to and use of public places.**

Handicapped persons have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication

available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of ~~Economic and Community Development~~ Commerce shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services."

SECTION 71.(a) G.S. 168-4.2 reads as rewritten:

"**§ 168-4.2. May be accompanied by ~~assistance dog.~~service animal.**

Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, ~~or~~ hearing impaired person, as defined in G.S. 8B-1(2), or person with a seizure disorder has the right to be accompanied by ~~an assistance dog~~ a service animal especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168-3, and has the right to keep the ~~assistance dog~~ service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, ~~pursuant to~~ under G.S. 168-4.3, stamped "NORTH CAROLINA ~~ASSISTANCE DOG~~ SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the ~~dog~~ animal is being trained or has been trained as ~~an assistance dog. An assistance dog~~ a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3 but may not occupy a seat in any of these places. The ~~trainer of the assistance dog may be accompanied by the dog~~ service animal may accompany that animal's trainer during training sessions in any of the places listed in G.S. 168-3.

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function."

SECTION 71.(b) G.S. 168-4.3 reads as rewritten:

"**§ 168-4.3. Training and registration of ~~assistance dog.~~service animal.**

The Department of Health and Human Services, shall adopt rules for the registration of ~~assistance dogs~~ service animals and shall issue registrations to a visually impaired person, a hearing impaired person, ~~or~~ a mobility impaired ~~person~~ person, or a person with a seizure disorder who makes application for registration of ~~a dog~~ an animal that serves as ~~an assistance dog.~~ a service animal. The rules adopted regarding registration shall require that the ~~dog~~ animal be trained as ~~an assistance dog~~ a service animal by an appropriate agency, and that the certification and registration be permanent for the particular ~~dog~~ animal and need not be renewed while that particular ~~dog~~ animal serves the person applying for registration as ~~an assistance dog.~~ a service animal. No fee may be charged the person for the application, registration, tag, or replacement in the event

the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities."

SECTION 71.(c) G.S. 168-4.4 reads as rewritten:

"**§ 168-4.4. Responsibility for ~~assistance dog.~~service animal.**

The visually impaired person, hearing impaired person, ~~or~~ mobility impaired ~~person~~ person, or person with a seizure disorder who is accompanied by ~~an assistance dog~~ a service animal may not be required to pay any extra compensation for the ~~dog.~~ animal. The person has all the responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any ~~dog,~~ animal, including liability for any damage done by the ~~dog.~~animal."

SECTION 72.(a) Section 9.2 of Chapter 707 of the 1963 Session Laws, as amended by S.L. 2002-66, reads as rewritten:

"Sec. 9.2. Beginning with the 2003-2004 fiscal year, the base amount of funding for current expense expenditures from local funds shall include the previous ~~years'~~ year's level of current expense expenditures (for example, eight million seven hundred thousand dollars ($8,700,000) in 2002-2003), multiplied by one plus the average percentage change in local current expense school expenditures for the two most recent available fiscal ~~year~~ years for low-wealth counties in North Carolina (all local expenditures shall include local current expense expenditures incurred by charter schools within the appropriate districts), as determined by the Superintendent of Public Instruction or that person's designee. The average percentage change shall be calculated by (i) adding together for each of the two previous fiscal years the total current local expense expenditures for all low-wealth counties, (ii) dividing each of those totals, respectively, by the number of low-wealth counties receiving low wealth funding in each year to obtain an average low-wealth county local current expense expenditure for each year, and (iii) comparing the two averages. The average percentage change shall equal the percent difference between the averages for the two years.) The resulting product shall then be multiplied by a ratio consisting of the Average Daily Membership used to distribute State funding for the succeeding fiscal year as provided by the Department of Public Instruction, divided by the Average Daily Membership used to distribute funding for the current fiscal year, as determined by the Superintendent of Public Instruction, or that person's designee. ~~The resulting number shall be added to or subtracted from the previous year's amount of current expense expenditures from local funds. This sum~~ The resulting product shall be the required level of current expense funding to be appropriated by the Board of Commissioners from any local sources, including both general and supplemental tax revenues, and not including fines and forfeitures or restricted use sales taxes authorized by Article 40 or 42 of Chapter 105 of the General Statutes."

SECTION 72.(b) The remainder of Chapter 707 of the 1963 Session Laws is not changed by this section except to the extent any previously enacted provisions for the establishment and funding of current expense expenditures are inconsistent with the provisions of this section.

SECTION 73.(a) Section 6(a) of Chapter 246, Session Laws of 1991, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, reads as rewritten:

"Sec. 6. Orange County Civil Rights Ordinance. (a) The Board of Commissioners of Orange (hereafter 'Board of Commissioners') may adopt an ordinance (hereafter 'the Ordinance') to prohibit discrimination in ~~employment, housing,~~ housing and public accommodations on the basis of race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

The Board of Commissioners may include in the Ordinance a prohibition of language or conduct or both directed at an individual or at a group of individuals because of that individual's or group of individuals' actual or perceived race, color, religion, gender, national origin, age, disability, marital status, familial status, or veteran status which communicates in a threatening manner words that incite imminent lawless action or which tend to incite an immediate breach of the peace."

SECTION 73.(b) Section 6(b)(9) of Chapter 246, Session Laws of 1991, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, reads as rewritten:

"(b) The Board of Commissioners may, in the Ordinance, adopt procedures and delegate powers to the Orange County Human Relations Commission (hereafter 'the Commission') which are necessary and proper for carrying out and enforcing the Ordinance. To assist in the enforcement of the Ordinance, the Commission has, but is not limited to, the following powers:

...

(9) Making application, in its discretion, to the Office of Administrative Hearings for the designation of an administrative law judge to preside over a hearing in cases involving allegedly unlawful ~~employment practices, public accommodations,~~ public accommodations or other conduct made unlawful by subsection (a) of this section after conciliation efforts have failed; and

..."

SECTION 73.(c) Section 6(d) of Chapter 246, Session Laws of 1991, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, reads as rewritten:

"(d) The administrative law judge may recommend the imposition of mandatory and prohibitory injunctive relief, compensatory damages (which, as provided by the 1991 Civil Rights Act, includes emotional pain, humiliation, embarrassment, and inconvenience), punitive damages, and any other relief the administrative law judge deems appropriate; provided that:

(1) Punitive damages may be recommended only if the administrative law judge finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the ~~complainant; and~~ complainant.

~~(2) In cases involving unlawful employment practices, the administrative law judge may recommend reinstatement, hiring, and/or back pay.~~

In all cases wherein the Commission applies to the Office of Administrative Hearings for the designation of an administrative law judge, the Commission shall be the complainant and the case in support of the Commission shall be presented by the Commission's attorney.

The administrative law judge may, in his or her discretion, recommend that the respondent be awarded reasonable costs and attorneys' fees in the event the respondent prevails."

SECTION 74. S.L. 1997-182 is repealed. This also repeals G.S. 18B-1006(l).

SECTION 75. Section 7.13(b) of S.L. 2002-126 reads as rewritten:

"**SECTION 7.13.(b)** The Office of State Budget and Management shall ~~issue a Request for Proposals for~~ conduct an analysis of the structure and operation of the Department of Public ~~Instruction that identifies~~ Instruction. The analysis shall identify potential efficiencies and savings in the operations of the Department. The analysis may consider consolidation of functions with other agencies and automation of functions.

~~The Request for Proposals may include contingency proposals based on potential savings.~~

The Office of State Budget and Management shall ~~consult with~~ report its findings to the State Board of Education. The State Board of Education shall report to the Joint Legislative Education Oversight Committee ~~prior to the award of the contract.~~by March 15, 2004, on the results of the analysis."

SECTION 76.(a) Section 5 of S.L. 2002-142 reads as rewritten:

"**SECTION 5.** It is unlawful to release dogs ~~on, or to allow them to run on,~~ on posted land without the written, signed, and dated permission of the owner or lessee of the land. This permission shall be renewed annually in order to remain active."

SECTION 76.(b) This section becomes effective October 3, 2002. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 77.(a) Section 61.5 of S.L. 2002-159 is repealed.

SECTION 77.(b) Section 1.1 of S.L. 2002-162 is repealed.

SECTION 78. The introductory language of the second Section 3 of S.L. 2003-31 reads as rewritten:

"**SECTION ~~3.~~3.1.** Section 36(b) of S.L. 2002-159, as amended by Section 1 of S.L. 2003-2, reads as rewritten:"

SECTION 79. The introductory language of Section 1 of S.L. 2003-103 reads as rewritten:

"**SECTION 1.** Article 1 of Chapter 166A of the General ~~Statues~~ Statutes is amended by adding a new section to read:"

SECTION 80. Section 1 of S.L. 2003-110 reads as rewritten:

"**SECTION 1.** G.S. 20-141 is amended by adding a new subsection to read:

(o) A violation of G.S. 20-123.2 shall be a lesser included offense in any violation of this section. No drivers license points or insurance surcharge shall be assessed on account of a violation of this subsection."

SECTION 81. Section 2 of S.L. 2003-128 reads as rewritten:

"**SECTION 2.(a)** A ~~county~~ county, city, or town may adopt ordinances to regulate the removal and preservation of existing trees and shrubs prior to development within a perimeter buffer zone of up to 50 feet along public roadways and property boundaries

adjacent to developed properties and up to 25 feet along property boundaries adjacent to undeveloped properties."

"**SECTION 2.(b)** Ordinances adopted pursuant to this section shall:

(1) Provide that the required buffer area shall not exceed twenty percent (20%) of the area of the tract, net of public road rights-of-way and any required conservation easements.

(2) Provide that buffer zones that adjoin public roadways shall be measured from the edge of the public road right-of-way.

(3) Provide that tracts of two acres or less, net of public road rights-of-way, that are zoned for single-family residential use are exempt from the requirements of the ordinances.

(4) Provide that the ordinances are limited to situations where undeveloped property is planned or zoned in accordance with adopted planning and zoning regulations.

(5) Provide that a survey of individual trees is not required.

(6) Include reasonable provisions for access onto and within the subject property.

(7) Exclude normal forestry activities on property taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes. However, for such properties, a ~~county~~ county, city, or town may deny a building permit or refuse to approve a site or subdivision plan for a period of three years following completion of the harvest if all or substantially all of the perimeter buffer trees that should have been protected were removed from the tract of land for which the permit or plan approval is sought. A ~~county~~ county, city, or town may deny a permit or refuse to approve a site or subdivision plan for a period of two years if the owner replants the buffer area within 120 days of harvest with plant material that is consistent with buffer areas required under the county's ordinances.

"**SECTION 2.(c)** Before adopting an ordinance under this section, the county board of commissioners or governing body of the city or town shall hold a public hearing on the proposed ordinance. Notice of the public hearing shall be given in accordance with G.S. ~~153A-323.~~153A-323 or G.S. 160A-364, as appropriate.

"**SECTION 2.(d)** ~~This~~ As to county ordinances, this section does not apply to areas located within the corporate limits or extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes of any municipality.

"**SECTION 2.(e)** This section applies to the Town of Rutherfordton and to Wake County only."

SECTION 82.(a) Section 5 of S.L. 2003-147 is repealed.

SECTION 82.(b) G.S. 115C-264 reads as rewritten:

"**§ 115C-264. Operation.**

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. ~~It shall not be mandatory that the provisions of G.S. 115C-522(a) and 143-129 be complied with~~ Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services."

SECTION 82.(c) Section 12 of S.L. 2003-147 reads as rewritten:

"**SECTION 12.** Sections 1 through ~~8~~ 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section ~~9~~ 10 of this act, or April 1, 2004, whichever occurs first. The remainder of this act is effective when it becomes law."

SECTION 82.(d) Subsections (a) and (b) of this section become effective for a local school administrative unit when the Department of Public Instruction certifies that unit as being E-Procurement compliant as provided in Section 10 of S.L. 2003-147, or April 1, 2004, whichever occurs first.

SECTION 83. Section 2 of S.L. 2003-194 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and applies to the 2003-2004 academic ~~year~~ year, beginning with the Spring 2004 semester, and each subsequent year."

SECTION 84.(a) The introductory language of Section 26.(e) of S.L. 2003-212 reads as rewritten:

"**SECTION 26.(e)** ~~G.S. 58-6-30~~ G.S. 58-15-30 reads as rewritten:".

SECTION 84.(b) G.S. 58-31-66, as enacted in Section 27 of S.L. 2003-212, reads as rewritten:

"**§ 58-31-66. Public construction contract surety bonds.**

~~(a)~~ Neither the State nor any county, city, or other political subdivision of the State, or any officer, employee, or other person acting on behalf of any such entity shall, with respect to any public building or construction contract, require any contractor, bidder, or proposer to procure a bid bond, payment bond, or performance bond from a particular surety, agent, producer, or broker.

~~(b) Nothing in this section prohibits an officer or employee acting on behalf of the State or a county, city, or other political subdivision of the State from:~~

~~(1) Approving the form, sufficiency, or manner of execution of the surety bonds furnished by the surety selected by the bidder to underwrite the bonds.~~

~~(2) Disapproving, on a reasonable, nondiscriminatory basis, the surety selected by the bidder to underwrite the bonds~~ because ~~of the financial condition of the surety.~~

~~(c) A violation of this section renders the public building or construction contract void ab initio.~~"

SECTION 84.(c) Subsection (a) of this section becomes effective January 1, 2004. Subsection (b) of this section becomes effective October 1, 2003.

SECTION 85. Section 2.2(a) of S.L. 2003-284 reads as rewritten:

"**SECTION 2.2.(a)** The General Fund availability used in developing the 2003-2005 biennial budget is shown below:

	FY 2003-2004	**FY 2004-2005**
...		
Adjustments to Availability: 2003 Session		
...		
~~Attorney General Settlement Funds~~	~~10,000,000~~	~~0~~
Conflicts of Interest Global Settlement	10,000,000	0

..."

SECTION 86. Section 3.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 3.1.** Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 2005, according to the following schedule:

Current Operations – Highway Fund	**2003-2004**	**2004-2005**
(1) Transportation Admin. (84210)	$72,776,692	$72,898,916
(2) Transportation Operations (84220)	28,190,393	28,150,605
(3) Transportation Programs (84230)		
State Construction		
Secondary	89,600,000	90,590,000
Urban	28,000,000	~~14,000,000~~

			28,000,000
	Public Access	2,000,000	2,000,000
	Spot Safety	9,100,000	9,100,000
	Contingency	15,000,000	10,000,000
	Federal Aid Match	4,160,000	4,280,000
	Maintenance	582,507,482	573,436,154
	Asphalt Plant/OSHA	425,000	425,000
	Capital	-	-
	Ferry Operations	19,677,283	19,677,283
	Aid to Municipalities	89,600,000	90,590,000
	Rail	15,090,919	15,531,153
	Public Transit	79,705,266	80,302,926
(4)	Governor's Highway Safety (84240)	292,449	293,118
(5)	Transportation Regulation (84260)	102,032,933	102,896,913
(6)	Reserves, Transfers, Other Agencies (84270)	214,626,257	217,352,347
TOTAL		**$1,352,784,674**	~~**$1,331,524,415**~~ **$1,345,524,415**"

SECTION 87. Section 6.3(b) of S.L. 2003-284 reads as rewritten:

"**SECTION 6.3.(b)** ~~The~~ Except as provided in G.S. 116-30.1 through G.S. 116-30.4, the Office of State Budget and Management shall report the necessary adjustments to the General Assembly no later than 10 days after the convening of the 2004 Regular Session of the 2003 General Assembly. The Director of the Budget shall include the adjustments prepared in accordance with subsection (a) of this section in the recommended adjustments to the authorized budget for the 2004-2005 fiscal year."

SECTION 88. Section 7.5 of S.L. 2003-284 reads as rewritten:

"**SECTION 7.5.~~(a) Funds in the Reserve for Experience Step Increase for Teachers and Principals in Public Schools shall be used for experience step increases for employees of schools operated by a local board of education, the Department of Health and Human Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention who are paid on the teacher salary schedule or the principal and assistant principal salary schedule.~~**

~~SECTION 7.5.(b)~~ Effective July 1, 2003, any permanent certified personnel employed on July 1, 2003, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2003, any permanent personnel employed on July 1, 2003, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%). For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus."

SECTION 89. Section 10.5 of S.L. 2003-284 reads as rewritten:

"**SECTION 10.5.(a)** The Department of Health and Human Services may administer the "Senior Cares" prescription drug access program approved by the Health

and Wellness Trust Fund Commission and funded from the Health and Wellness Trust Fund.

"**SECTION 10.5.(b)** The Department of Health and Human Services may apply to the Center for Medicare and Medicaid Services (CMS) for a Medicaid waiver under section 1115 of the Social Security Act to provide federal matching funds for limited prescription drug and insulin coverage, prescription assistance, and assistance in accessing primary care for elderly persons. The waiver may provide a prescription drug benefit for eligible individuals each benefit year. The waiver may also provide for co-payments for generic drugs and higher co-payments for brand-name drugs. Eligible individuals may include persons who:

(1) Are 65 years of age or older;

(2) Are ineligible for Medicaid prescription drug and insulin coverage;

(3) Are without coverage for prescription drugs or insulin under other public or private health insurance; and

(4) Have a family income that is two hundred percent (200%) or less of the federal poverty level.

"**SECTION 10.5.(c)** Funds previously allocated by the Health and Wellness Trust Fund Commission for Senior Care, as reflected in the Memorandum of Understanding with the Department of Health and Human Services dated May 14, 2002, and the funds allocated by the Commission for the medication management and prescription assistance programs shall be used as the required State and local match for the waiver.

"**SECTION 10.5.(d)** The administration of the Senior Care Program by the Department of Health and Human Services, as authorized in Section 10.5 of S.L. 2003-284, shall include eligibility determination.

"**SECTION 10.5.(e)** The Department of Health and Human Services shall authorize, within allocations made for this purpose, payments for Senior Care, as allowed under the CMS Senior Care Program waiver.

"**SECTION 10.5.(f)** This section is effective when this act becomes law and expires upon the expiration of the CMS waiver or at the time funds for the Program are terminated, whichever occurs first."

SECTION 90. S.L. 2003-284 is amended by adding a new section following Section 10A.1 to read:

"**MAINTENANCE MECHANIC POSITION FOR DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

SECTION 10A.2.(a) Of the funds appropriated in this act to the Department of Agriculture and Consumer Services, the sum of twenty-seven thousand eight hundred eighty dollars ($27,880) for the 2003-2004 fiscal year may be used to establish and support one Maintenance Mechanic position at the Oxford Research Station and the sum of thirty-seven thousand one hundred seventy-three dollars ($37,173) for the 2004-2005 fiscal year may be used to continue and support the Maintenance Mechanic position at the Oxford Research Station.

SECTION 10A.2.(b) This section becomes effective October 1, 2003."

SECTION 91. Section 11.4(e) of S.L. 2003-284 reads as rewritten:

"**SECTION 11.4.(e)** It is the intent of the General Assembly that the funds under ~~subsection (c)~~ subsection (d) of this section are recurring funds."

SECTION 92. Section 17.1 of S.L. 2003-284 is amended by adding the following new subsection to read:

"**SECTION 17.1.(d)** This section becomes effective October 1, 2003."

SECTION 93.(a) Section 23.1 of S.L. 2003-284 is repealed.

SECTION 93.(b) Section 22.6 of S.L. 2002-126 reads as rewritten:

"**SECTION 22.6.(a)** The Department of Revenue may draw up to ~~seven million eight hundred forty thousand five hundred thirteen dollars ($7,840,513)~~three million dollars ($3,000,000) through June 30, ~~2004,~~ 2005, from the collection assistance fee account created in G.S. 105-243.1 in order to pay for the costs of establishing and equipping a central taxpayer telecommunications service center for collections and assistance and for the costs associated with aligning local field offices with the new center. The Department of Revenue shall use the funds drawn during the 2004-2005 fiscal year to support information technology costs.

"~~**SECTION 22.6.(b)** The Secretary of Revenue shall consult with the Joint Legislative Commission on Governmental Operations on a detailed plan with proposed costs before any funds may be expended for these purposes. This plan must be presented by October 31, 2002.~~

"**SECTION 22.6.(c)** Beginning January 1, 2003, and ending on the second quarter following completion of the projects described in subsection (a) of this section, the Department of Revenue must report quarterly to the Joint Legislative Commission on Governmental Operations on the use of the funds and the progress of establishing the new center.

"**SECTION 22.6.(d)** There is appropriated from the collection assistance fee account created in G.S. 105-243.1 to the Department of Revenue the sum of one million six hundred twenty-two thousand eight hundred ninety-six dollars ($1,622,896) for the 2003-2004 fiscal year and the sum of two million one hundred fifty-four thousand five hundred ninety-three dollars ($2,154,593) for the 2004-2005 fiscal year to pay for the costs of establishing and equipping a central taxpayer telecommunications service center for collections and assistance and for the costs associated with aligning local field offices with the new center."

SECTION 94. Section 29.21 of S.L. 2003-284 reads as rewritten:

"**SECTION 29.21.** The Joint Legislative Transportation Oversight Committee shall contract with an independent consultant to study the project delivery process of the Department of Transportation. The study shall examine all aspects of the project delivery process, including (i) Department of Transportation planning, design, and contract letting procedures, and (ii) the effect of other resource and regulatory agency decisions and processes on the project delivery process. The study shall identify all significant causes of delay in the project delivery process, and suggest specific, practical solutions to decrease the time it takes to deliver a transportation project from inception to completion. The Committee shall endeavor to complete this study by April 1, ~~2003.~~ 2004. The provisions of G.S. 120-32.02 shall apply to any contract with a consultant pursuant to this section."

SECTION 95. Section 30.3 of S.L. 2003-284 reads as rewritten:

"**SECTION 30.3.** The annual salaries, payable monthly, for the 2003-2004 and 2004-2005 fiscal years for the following executive branch officials are:

Executive Branch Officials	**Annual Salary**
Chairman, Alcoholic Beverage Control Commission	$92,946
State Controller	130,078
Commissioner of Motor Vehicles	92,946
Commissioner of Banks	104,523
Chairman, Employment Security Commission	129,913
State Personnel Director	102,119
Chairman, Parole Commission	84,871
Members of the Parole Commission	78,356
Chairman, Utilities Commission	116,405
Members of the Utilities Commission	104,523
Executive Director, Agency for Public Telecommunications	78,356
~~General Manager, Ports Railway Commission~~	~~70,755~~
Director, Museum of Art	95,240
Executive Director, North Carolina Housing Finance Agency	115,031
Executive Director, North Carolina Agricultural Finance Authority	90,470
State Chief Information Officer	130,000"

SECTION 96.(a) Section 30.20.(k) of S.L. 2003-284 is repealed.

SECTION 96.(b) G.S. 135-106(a), as rewritten by Section 3.20.(l) of S.L. 2003-284, reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is unable to perform any occupation ~~for which the beneficiary or participant is reasonably qualified for by~~ or employment commensurate to the beneficiary's or participant's education, training or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or

participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience, the Department of State Treasurer and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 96.(c) Subsection (a) of this section becomes effective July 1, 2003. Subsection (b) of this section becomes effective July 1, 2004, and applies only to persons who are not vested in the disability plan in question on July 1, 2004.

SECTION 97. Section 45.12 of S.L. 2003-284 reads as rewritten:

"**SECTION 45.12.** Sections 45.2 through 45.5, Section 45.6, and Sections ~~45.8~~ 45.9 through 45.10 of this act become effective July 15, 2003. Sections 45.6A, 45.7, 45.8, and 45.11 become effective October 1, 2003. Section 45.5A and Section 45.6B become effective January 1, 2004. The remainder of this part is effective when it becomes law."

SECTION 98. Section 46.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 46.1.** Repair and Renovation. – This section authorizes the issuance or incurrence of special indebtedness in a maximum aggregate principal amount of three hundred million dollars ($300,000,000) to be used only in accordance with this section

for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund.

Proceeds of the Repair and Renovation special indebtedness shall be used only for the purposes and in accordance with the procedures provided in G.S. 143-15.3A, the Repairs and Renovations Reserve ~~Account.~~Account and Section 31.5 of this act, as provided in this section.

Except in the case of an emergency as provided in G.S. 143-15.3A, the Director of the Budget shall use the Repair and Renovations funds only for repairs and renovations that have been approved by an act of the General Assembly or, if the General Assembly is not in session, for repairs and renovations about which the Director of the Budget has first consulted with the Joint Legislative Commission on Governmental Operations under G.S. 143-15.3A(c).

For debt to be issued during the 2003-2004 fiscal year, the Director of the Budget shall select repair and renovation projects as follows: an amount equal to forty-six percent (46%) of the debt shall be issued for projects identified by the Board of Governors of The University of North Carolina in accordance with Section 31.5 of this act and fifty-four percent (54%) shall be issued for projects identified by the Office of State Budget and Management in accordance with Section 31.5 of this act.

The Director of the Budget shall direct the State Treasurer to carry out the financing for repair and renovation projects selected pursuant to this section. Special indebtedness authorized by this section shall be issued or incurred only in accordance with Article 9 of Chapter 142 of the General Statutes, as enacted by this part."

SECTION 99. The lead-in language of Section 46.2 of S.L. 2003-284 reads as rewritten:

"**SECTION 46.2.** Article 9 of Chapter 142 of the General Statutes, as enacted by S.L. 2003-314, is rewritten to read:".

SECTION 100. Section 3 of S.L. 2003-300 reads as rewritten:

"**SECTION 3.** Waiver of Deadlines, Fees, and Penalties. – Except as prohibited by the Constitution, the Governor may extend deadlines and waive penalties or fees as is necessary to alleviate hardship created for deployed military personnel serving in Operation Iraqi Freedom. This authority includes the authority to do all of the following:

(1) Extend for up to 90 days from the end of deployment the validity of a permanent or temporary drivers license issued under G.S. 20-7 to deployed military personnel.

(2) Waive civil penalties and restoration fees under G.S. 20-309 for any deployed military personnel whose motor vehicle liability insurance lapsed during the period of deployment or within 90 days after the military member returned to North Carolina if the military member certifies to the Division of Motor Vehicles that the motor vehicle was not driven on the highway by anyone during the period in which the motor vehicle was uninsured and that the owner now has liability insurance on the motor vehicle.

(3) Allow up to 90 days from the end of deployment for any deployed military personnel to renew ~~a license as defined in G.S. 93B-1.~~ an occupational license. During the period of deployment or active duty and until the expiration of the 90-day period provided for in this subdivision, expired occupational licenses that are within the scope of this act remain valid, as if they had not expired. For the purposes of this section, the term "occupational license" means any license (other than a privilege license), certificate, or other evidence of qualification that an individual is required to obtain before the individual may engage in or represent himself or herself to be a member of a particular profession or occupation.

(4) Require that any renewal fee applicable to the renewal of a license under subdivision (3) of this section be prorated over the period covered by the license and reduced in proportion to the period of time that the licensee was deployed outside the State."

SECTION 101. Since S.L. 2003-315 has enacted the same matter, if House Bill 27, 2003 Regular Session, becomes law, then Section 2 of House Bill 47 is repealed, and G.S. 145-19, as enacted by House Bill 47, is recodified as G.S. 145-20.

SECTION 102. If Senate Bill 236 becomes law, Section 12 of that bill reads as rewritten:

"**SECTION 12.** Parts 1 and 8 of this act are effective for taxable years beginning on or after January 1, 2003. Part 5 of this act becomes effective July 1, 2003. ~~Part 9 of this act is effective for taxable years beginning on or after January 1, 2003, and shall expire for taxable years beginning on or after January 1, 2005.~~ Part 10 of this act becomes effective January 1, 2004. The remainder of this act is effective when it becomes law."

SECTION 103. If Senate Bill 668, 2003 General Assembly, becomes law, then G.S. 18B-1001.1(b) reads as rewritten:

"(b) A wine shipper permittee that ships to addresses in the State more than 1,000 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell the products of the wine shipper permittee under Article 12 of this Chapter if the wine shipper permittee is contacted by a wholesaler that wishes to sell the products of the wine shipper permittee. This provision shall not be construed to require the wine shipper permittee to appoint the wholesaler that originally contacted the wine shipper permittee. Wine purchased by a resident of the State at the premises of the wine shipper permittee and shipped to an address in the State under G.S. ~~18B-109(b)~~18B-109(d) shall not be included in calculating the total of 1,000 cases per year."

SECTION 104.(a) If Senate Bill 919, 2003 Regular Session, becomes law, G.S. 50B-3.1(h) as enacted by that law, reads as rewritten:

"(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the

firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge."

SECTION 104.(b) This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SECTION 105. Wherever the term "Public Campaign Financing Fund" appears in Chapter 105 or Chapter 163 of the General Statutes, in any other chapter of the General Statutes, or in any act of the General Assembly, the term is changed to read "Judicial Elections Fund."

SECTION 106. Notwithstanding any other provision of law, Fayetteville State University may retain the proceeds from the sale of the existing chancellor's residence. Fayetteville State University may use the proceeds from the sale of the existing chancellor's residence, and any other nonappropriated funds available, to construct a new chancellor's residence. Proceeds from the sale not used for that purpose shall revert.

SECTION 107.(a) If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices in G.S. 163-1 until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan.

SECTION 107.(b) If the filing period or primary election or both are postponed under this section, the State Board of Elections shall adopt rules for the implementation of the primary election schedule. Adoption of those rules is not subject to Chapter 150B of the General Statutes. Those rules shall include a postponed filing period and other necessary parts of the election schedule. The rules shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its rules, including a Revised Primary Timetable, to county boards of elections.

SECTION 107.(c) The State Board of Elections shall be governed by the following limitations:

(1) Any postponement of the candidate filing period or the primary shall apply to all offices in G.S. 163-1 whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The

postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

(3) The State Board shall set a filing period no shorter than 10 business days.

(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate.

SECTION 107.(d) If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office in September of the year of the election.

SECTION 107.(e) For the 2004 primary election only, G.S. 163-112 shall be applied by substituting "10 days" for "30 days" wherever it appears.

SECTION 107.(f) The provisions of this section apply during the 2004 election year only.

SECTION 108. The following position and position number for position reductions in the Department of Revenue, as provided in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, June 28, 2003, is amended as follows: in Project Tax Collect, delete "Revenue Officer I – #4784-000-0076-639" and substitute "Revenue Officer I – #4784-0000-0074-116".

SECTION 109.(a) The Department of Environment and Natural Resources may identify positions in the Administrative Divisions and Regional Offices, in addition to the operating costs in the Administrative Divisions and Regional Offices, to comply with a reduction of two hundred thousand dollars ($200,000) for the 2003-2004 fiscal year and for the 2004-2005 fiscal year in operating support in the Administrative Divisions and Regional Offices required by Section 2.1, S.L. 2003-284, as set forth in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets. Notwithstanding G.S. 143-23 or G.S. 143-34.1, the Department of Environment and Natural Resources may continue and support the positions identified under this subsection from receipts rather than from its General Fund appropriation in order to fulfill the reduction of two hundred thousand dollars ($200,000) under this subsection.

SECTION 109.(b) The Department of Environment and Natural Resources may identify operating support reductions in the Division of Parks and Recreation, in addition to reductions to seasonal staff in the Division of Parks and Recreation, to comply with a reduction of one hundred forty-four thousand dollars ($144,000) for the

2003-2004 fiscal year and for the 2004-2005 fiscal year in seasonal staff in the Division of Parks and Recreation required by Section 2.1, S.L. 2003-284, as set forth in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets.

SECTION 109.(c) The Department of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations no later than 30 days after the 2003 Regular Session of the 2003 General Assembly adjourns to a date certain the specific line items from which the reductions under subsection (a) and subsection (b) of this section were identified.

SECTION 110. Unless otherwise provided, this act is effective when it becomes law.

HOUSE BILL 281

Short Title:	Technical Corrections Act.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Rules, Calendar, and Operations of the House.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-17 reads as rewritten:

"**§ 78A-17. Exempt transactions.**

Except as otherwise provided in this Chapter, the following transactions are exempted from G.S. 78A-24 and G.S. 78A-49(d):

(1) Any isolated nonissuer transaction, whether effected through a dealer or ~~not;~~not.

(2) Any nonissuer distribution other than by a controlling person of an outstanding security if

a. A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

b. A registered dealer files with the Administrator such information relating to the issuer as the Administrator may by rule or order require, or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the ~~security;~~security.

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy; but the Administrator

may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the dealer for a specified ~~period;~~period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among ~~underwriters;~~underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a lien or security interest in real or personal property, or by an agreement for the sale of real estate or chattels, if the entire security interest or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a ~~unit;~~unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or ~~conservator;~~conservator.

(7) Any transaction executed by a person holding a bona fide security interest without any purpose of evading this ~~Chapter;~~Chapter.

(8) Any offer or sale to an entity which has a net worth in excess of one million dollars ($1,000,000) as determined by generally accepted accounting principles, bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary ~~capacity;~~capacity.

(9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security transaction. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required.

(10) Any offer or sale of a preorganizational certificate or subscription if: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; (ii) no public advertising or solicitation is used in connection with the offer or sale; (iii) the number of subscribers does not exceed 10 and the number of offerees does not exceed 25; and (iv) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any

security holder in this State, or (ii) the issuer first files a notice specifying the terms of the offer and the Administrator does not by order disallow the exemption within the next 10 full business ~~days;~~days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this Chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either ~~act;~~act.

(13) Any offer or sale by a domestic entity of its own securities if (i) the entity was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (ii) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, (iii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iv) the ~~corporation~~ entity is both organized and operated principally to promote some community, industrial, or agricultural development that confers a public benefit rather than organized and operated principally to generate a pecuniary ~~profit;~~profit.

(14) Any offer, sale or issuance of securities pursuant to an employees' stock or equity purchase, option, savings, pension, profit-sharing, or other similar benefit plan that is exempt under the provisions of G.S. ~~78A-16(11);~~78A-16(11).

(15) Any offer or sale of limited partnership interests in a partnership organized under the North Carolina Uniform Limited Partnership Act for the sole purpose of constructing, owning and operating a low and moderate income rental housing project located in North Carolina if the total amount of the offering and the total number of limited partners, both within and without this State for each such partnership, does not exceed five hundred thousand dollars ($500,000) and 100 respectively. This exemption shall be allowed without limitation as to (i) the number, either in total or within any time period, of separate partnerships which may be formed by the same general partner or partners, sponsors or individuals in which partnership interests are offered; (ii) the period over which such offerings can be made; (iii) the amount of each limited partner's investment; or (iv) the period over which such investment is payable to the partnership. For purposes of this subdivision (15), the term "low and moderate rental housing project" means:

a. Any housing project with respect to which a mortgage is insured or guaranteed under section 221(d)(3) or 221(d)(4) or 236 of the National Housing Act, or any housing project financed or assisted by direct loan, mortgage insurance or guaranty, or tax abatement under similar provisions of federal, State or local laws, whether now existing or hereafter enacted; or

b. Any housing project, some or all of the units of which are available for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of other federal, State or local law authorizing similar levels of subsidy for lower income families, whether now existing or hereafter enacted; or

c. Any housing project with respect to which a loan is made, insured or guaranteed under Title V, section 515, of the Housing Act of 1949, or under similar provisions of other federal, State or local laws, whether now existing or hereafter enacted.

(16) Any offer to purchase or to sell or any sale or issuance of a security, other than a security covered under federal law, pursuant to a plan approved by the Administrator after a hearing conducted pursuant to the provisions of G.S. 78A-30 or any transaction incident to any other judicially or governmentally approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly cash.

(17) Any transaction that is exempt pursuant to rules established by the Administrator creating limited offering transactional exemptions that are consistent with the objectives of compatibility with federal limited offering exemptions and uniformity among the states. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required by such rules.

(18) Any transaction incident to a class vote by security holders, pursuant to the articles of incorporation or similar organizational document or the applicable statute governing the internal affairs of the entity, on a merger, conversion, consolidation, share exchange, reclassification of securities, or sale of an entity's assets in consideration of the issuance of securities of entity.

(19) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein by the issuer in a transaction that meets all of the following criteria:

a. The underlying viatical settlement transaction with the viator was not in violation of any applicable state or federal law; and

b. The offer and sale of such contract or interest therein is conducted in accordance with such conditions as the Administrator requires by rule or order, including conditions governing advertising, suitability standards, financial statements, the investor's right of rescission, and the disclosure of information to offerees and purchasers.

The Administrator may establish a fee to recover costs for any filing required by such rules, not to exceed five hundred dollars ($500.00)."

SECTION 2. This act is effective when it becomes law.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: July 9, 2003

RE: House Bill 281 (Technical Corrections Act)

General Comments

Part I of the proposed committee substitute for House Bill 281 contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments include correcting typographical and redlining errors, repealing obsolete provisions, making conforming changes, removing duplicative references, eliminating legalese and updating archaic drafting language, recodifying poorly placed provisions, and adding cross-references to benefit the users of the General Statutes.

Specific Comments

Section 1. This section amends G.S. 14-402(c)(3) to correct a typographical error in the definition of "crossbow" that appears in this section. A crossbow is a device, not a devise. The section also makes a pronoun correction.

Section 2. This section amends G.S. 20-7(b1) to correct a redlining error. S.L. 2001-424, s. 27.10A (s. 27.10A), amended G.S. 20-7 to add statutory requirements for proof of residency and social security numbers in obtaining a drivers license and to explicitly extend these requirements to learners permits and identification cards issued by the Division of Motor Vehicles. In the opening phrase of subsection (b1) of G.S. 20-7, s. 27.10A changed the wording from "To obtain a drivers license ..." to "To obtain an identification card, learners permit, or drivers license ..." but without showing the change by underlining and strikeouts, with the result that the actual wording in G.S. 20-7(b1) was not changed. The amendment in this section makes that change.

Section 3. This section repeals G.S. 49-13.1, which has become obsolete. G.S. 49-13.1 was enacted in 1969; it has not been amended since that time. It is the final section in an article dealing with legitimation of illegitimate children, and it provides that legitimation under the article does not affect the sufficiency of a mother's consent to the adoption of her child or make the father's consent necessary if it was not necessary under "G.S. 48-6(a)," a provision in the former adoptions law. Under G.S. 48-6(a) as it existed in 1969 (it has been repealed), the consent of the father of an illegitimate child was not necessary to an adoption unless the father legitimated the child before the mother consented. The law on paternal consent to adoptions has changed considerably since 1969, but, as the adoptions chapter, Chapter 48, was amended over time, conforming amendments were not made to G.S. 49-13.1. Chapter 48 itself curently deals with the relationship between legitimation and parental consent requirements, rendering G.S. 49-13.1 unnecessary as well as outdated (see Part 6 of Article 3). The General Statutes Commission therefore recommends that G.S. 49-13.1 be repealed.

Section 4. This section amends G.S. 55B-2(6) to correct a redlining error. S.L. 1999-313 amended Chapter 90B of the General Statutes to change the term, "Certified Clinical Social Worker" to "Licensed Clinical Social Worker" and required that these persons be licensed rather than certified. Two years later, S.L. 2001-87, s. 40(d), made one conforming change in G.S. 55B-2(6), but that act made an outright substitution of the new term "Licensed Clinical Social Worker" for "Certified Clinical Social Worker" in G.S. 55B-2(6) instead of showing the change by underlining and strikeouts, rendering it ineffective. The amendment in this section makes that change.

Section 5. This section makes the same change to several sections of the General Statutes. These sections contain references to population estimates by the "State Planning Officer." The State Planning Office was merged into the Office of State Budget and Management in 2000 (see S.L. 2000-140). The General Statutes Commission is informed that there is no longer a separate State Planning Officer and these conforming amendments changing "State Planning Officer" to "State Budget Officer" are appropriate.

Section 6. This section amends G.S. 78A-17 to make a conforming amendment to subdivision (13) by replacing the word "corporation" with the word "entity" in clause (iv). The amendment is required because subdivision (13) was amended in 2001 by two different session laws. S.L. 2001-197 added clause (iv), while S.L. 2001-201 changed "corporation" to "entity" throughout subdivision (13) as it existed before the addition of clause (iv) by S.L. 2001-197. The section also updates the style of the introductory language of G.S. 78A-17 and conforms the punctuation at the end of the subdivisions to current practice.

Section 7. This section amends G.S. 90-210.69(c) to correct a redlining error. S.L. 1997-399, s. 29, amended G.S. 90-210.69(c) but in the process the word "adopted" was dropped instead of being shown as stricken through. The word technically remains in the subdivision, and the amendment in this section deletes the word.

Section 8. This section amends G.S. 96-4(t)(2) to correct the terminology and to update a stylistic point. G.S. 96-4(t)(2) is properly termed a subdivision, not a subsection; the "2" is actually an Arabic numeral rather than a Roman numberal; and drafting style in this State now

views as unnecessarily redundant a reference to "(2)" in the phrase "this subdivision (2)" when the reference is in subdivision (2).

Section 9. This section amends G.S. 110-136.13(a) to correct a typographical error in a citation. The reference to G.S. 110-14 should have been to G.S. 110-36.14.

Section 10. This section amends G.S. 143-129.8(b) to correct a citation. The reference to G.S. 132-129(a) should have been to G.S. 132-129(b), which is the subsection in G.S. 132-129 that deals with notice.

Section 11. This section amends G.S. 147-69 to remove a duplicative reference to the Commissioner of Banks, to make references to the State Auditor and the State Treasurer gender neutral, and to replace two references to "such" with alternatives recommended by the General Assembly's drafting manual. S.L. 2001-193 transferred the Savings Institutions Division of the Department of Commerce to the Office of the Commissioner of Banks. The act also directed the Revisor of Statutes to replace references to the Administrator of the Savings Institutions Division with references to the Commissioner of Banks. In G.S. 147-69, this direction resulted in an unnecessary double reference to the Commissioner.

Section 12. This section (i) recodifies a poorly placed definitions section, and (ii) adds to the article-wide definitions in G.S. 163-278.6 various cross references to more specific definitions that apply to only a part of the article.

Article 22A of Chapter 163 (on campaign finance) has a definitions section, G.S. 163-278.6, that applies to the entire article. However, Part 1A of that article, dealing with disclosure requirements in political advertisements, has its own definitions section, G.S. 163-278.39B, that redefines one of the terms defined in G.S. 163-278.6 ("candidate") and contains other special definitions that use same or related terminology as that found in the article-wide definitions, e.g. "media" is defined in G.S. 163-278.6 and "print media" is defined in G.S. 163-278.39B. Moreover, rather than appearing as the first or second section of Part 1A, G.S. 163-278.39B appears towards the end of the part. As a result, it is easy for someone to miss the fact that Part 1A has its own definitions that supplement or replace the article-wide definitions. Subsection (a) of this section recodifies G.S. 163-39B as G.S. 163-38Z, which moves the section to the beginning of Part 1A. Subsection (b) adds at the end of several of the article-wide definitions a cross-reference to the related special definition to warn the user of the special definition's existence.

Section 13. This section effectively amends G.S. 160A-58.1 to recombine subsections (b) and (b1) into one subsection. Over time, various local acts have amended G.S. 160A-58.1 either to repeal G.S. 160A-58.1(b)(5) or to state that that subdivision does not apply to a particular locality. S.L. 2001-37 repealed (b)(5) for more than 10 localities, so it was codified in 2001 as a subsection (b1). By 2002, however, the number of localities where a local act specifically declared that (b)(5) did not apply to a particular locality also reached 10, and these were codified in the paragraph currently appearing as a second paragraph of (b)(5). There is no effective difference between repealing a provision for a locality and stating that the provision does not apply to that locality, so there is no need to continue to carry two subsections.

HOUSE BILL 281:
Technical Corrections Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Culpepper
Date:	July 15, 2003	**Summary by:**	Robin Johnson
Version:	S281-CSRH-53[v. 37]		Walker Reagan
			Staff Attorneys

SUMMARY: ***The Proposed Committee Substitute for House Bill 281 makes technical corrections and other changes to various statutes and session laws. Part I of the PCS (Sections 1 through 13) were recommended by the General Statutes Commission and have been summarized in a separate document by the Commission's staff. This summary will cover Part II (all remaining sections of the PCS), which contains changes identified by legislative staff, agency staff, and others.***

BILL ANALYSIS:

Sections 1-13. Pages 1-15.

- Please see the separate summary on these sections, which are recommended by the General Statutes Commission.

Section 14. – Page 15.

- Amends G.S. 1-44.2, which creates a presumption that upon abandonment of a railroad easement, "all right, title and interest in the strip, piece or parcel of land...shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement." Subsection (b) creates a statute of limitations to challenge this presumption by providing that "persons claiming ownership contrary to the presumption...have a period of one year from the date of enactment of this statute or the abandonment of the easement, whichever later occurs,...to bring any action to establish their ownership."
- In *McDonald's Corporation v. Dwyer*, 338 N.C. 445 (1994), the N.C. Supreme Court held the statute of limitations in subsection (b) to be a violation of due process "by effectively taking property of record title holders...without affording notice, an opportunity to be heard, and just compensation." This section deletes this language from subsection (b) of the statute.

Section 15. Pages 15-16.

- Amends G.S. 1-47(1) (10-year statute of limitations following money judgment) and 1-52(8) (3-year statute of limitation following judgment for fees due to a clerk, sheriff or other officer) to conform to changes made in S.L. 2003-59. Changes time statutes of limitation start to run from "rendition of judgment" to "entry of judgment".

Section 16. Pages 16-17.

- Amends G.S. 7A-16 to strike language providing that the initial terms for the three additional Court of Appeals judgeships appointed by the Governor on or after December 15, 2000 are effective until January 1, 2005.
- In *Pope v. Easley*, 354 N.C. 544 (2001), the N.C. Supreme Court held that, while the creation of the three judgeships was constitutional, the "provisions making the creation of the new judgeships effective upon gubernatorial appointment and allowing the appointees to serve for nearly four years before facing election" violated Article IV, Section 19 of the State Constitution. This provision provides that appointees "hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs."

Section 17. Page 17.

- G.S. 7B-808(b), as enacted by S.L. 2003-140, refers to a mental health evaluation **of a juvenile** under another statute. However, that other statute (G.S. 7B-503) does not mention a mental health evaluation of a juvenile. It does refer to a mental health evaluation of an alleged abuser or abusers. The Administrative Office of the Courts agrees with the proposed solution of removing the reference to "of a juvenile" in the new G.S. 7B-808(b).

Section 18. Page 17.

- S.L. 2001-487, s. 40(a) purported to amend the catch line of G.S. 8-53.5; however, bill drafting coded language was not used, meaning the change was not made.

Section 19. Pages 17-18.

- Amends G.S. 14-202.4, enacted in S.L. 1999-300, which made it unlawful for school personnel to take indecent liberties with a student. The change is to clarify that the statute also applies to situations where the student is present for a school-related or school-sponsored activity at another school and the school personnel is employed, volunteers or is present at that other school. This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Section 20. Pages 18-19.

- Amends G.S. 14-298 by codifying due process in the seizure of video poker machines. The 4th Circuit in *Helton v. Good* held that due process for this action must be codified.

Section 21. Page 19.

- Repeals G.S. 14-401.5, a criminal statute prohibiting non-amateur phrenology, palmistry, fortune-telling, or clairvoyance in 61 named counties. The statute exempts the amateur practice of those arts, provided it is done in connection with school or church socials in school or church buildings. A Superior Court in Haywood County and a District Court in Buncombe County held the statute to be a violation of the State Constitution, specifically Article II, Section 24(j) (non-statewide law regulating trade) and of Article II, Section 14 (freedom of speech). The District Court additionally found the statute violated the freedom of religion and due process protections of the U.S. and State Constitutions. The Haywood Superior Court case was *Somers v. Alexander*, 00 CVS 255 (2001) and the Buncombe District Court case was *State v. Rajaniemi*, 99-CR-8818 (1999).

Section 22. Page 19.

- Amends G.S. 15-190 by providing that the names of persons designated to carry out an execution are confidential and exempted from Chapter 132 (Public Records). The names are not subject to discovery or introduction in evidence in any proceeding unless the Senior Resident Superior Court Judge for Wake County compels disclosure upon a finding that disclosure is necessary to proper administration of justice.

Section 23. Pages 19-20.

- Amends G.S. 18B-600(f), enacted in S.L. 2003-218 (Senate Bill 19), which enacted a new provision regarding Township ABC elections. The change clarifies that it applies only to malt beverage, unfortified wine, and mixed beverage elections. It does not authorize townships to hold ABC store elections.

Section 24. Page 20.

- Repeals G.S. 18-1006(j)(4) which authorizes the ABC Commission to issue permits for the sale of alcoholic beverages to certain establishments in Swain County located within a recreation district. This statute has been declared "void and unenforceable" by a North Carolina court as a violation of the State constitutional requirements for local and general laws.

Section 25. Pages 21-22.

- Repeals G.S. 18B-1006(m)(3) which authorizes the ABC Commission to issue permits for the sale of alcoholic beverages to certain establishments in Halifax County located within an Interstate Economic Development Zone. This statute has been declared "void and unenforceable" by a North Carolina court as a violation of the State constitutional requirements for local and general laws.

Section 26. Page 21.

- Corrects misspelled word in G.S. 30-3.6(c) as enacted by Section 5 of S.L. 2003-296. Changes "decedent's" to "decedents".

Section 27. Pages 21-22.

- Amends G.S. 35A-1213(b) by removing the prohibition on nonresidents being appointed as general guardian or as guardian of a resident's estate. Nonresidents already may be appointed guardian of the person of a State resident.

Section 28. Pages 22-24.

- Corrects G.S. 40A-3(b) and (b1), which currently have the same catch line.

Section 29. Pages 24-25.

- Corrects G.S. 40A-42(a)(1) and (2), by adding distinctive catch lines.

Section 30. Pages 25-27.

- Amends various sections of Chapter 48 (Adoption) relative to when a punitive father is entitle to notice of adoption proceedings.
- Creates a process for a post-birth determination of whether consent of the 'alleged' father is needed. (Currently, there is a process for this to have pre-birth, but the statutes are silent as to post-birth.)
- Clarifies that if a person's consent is not necessary to the adoption, then that person has no right to participate in the adoption proceedings.
- Clarifies the notice requirements - 1) allows the court to waive, for cause, service on the spouse of the petitioner; and 2) clarifies there is no need to notice to someone whose consent is not required for the adoption as determined in G.S. 48-2-206.

- Clarifies that a statement of the reasons for non-compliance with the Interstate Compact for Placement of Children is acceptable where a statement of compliance is required in Chapter 48 interstate adoptions.

Section 31. Page 27.

- Repeals incorrect and unnecessary definitions in G.S. 54B-266 and G.S. 54C-200 that resulted from S.L. 2001-193, which directed the transfer of the Savings Institution Division to the State Banking Commissioner.

Section 32. Pages 27-28.

- At the request of the Department of Insurance, this section amends G.S. 58-64-33(a) by reinstating statutory language that was inadvertently changed by S.L. 2003-193, the Department's Continuing Care Retirement Communities Technical Corrections bill.

Section 33. Pages 28-29.

- (a) Amends G.S. 62-3(23) to delete Office of State Controller and substitute Office of Information Technology.
- (b) Amends G.S. 147-33.92 to clarify contradictory use of terms "local governmental units" and "local governmental entities", and to correct a reference to the federal Communications Act of 1934.

Section 34. Pages 29.

- Repeals Article 4 of Chapter 72, an antiquated law requiring the licensure and regulation of tourist camps and homes, cabin camps, roadhouses, and public dance halls.

Section 35. Page 29.

- Amends G.S. 105-129.6(b) to change the date the Department of Revenue must publish its report on the Bill Lee Act from March 1 of each year to April 1 of each year. The Department requests this change.

Section 36. Pages 29-30.

- Amends G.S. 110-90(1a), as enactd in the 2003 Budget Bill, to clarify that the child care licensing fee is an annual fee and is connected to the annual monitoring related to the licensure of child care facilities that is done every three years. Other adjustments to the language will allow Division of Child Daycare to implement the fee by October 1, 2003.
- Amends Sections 5.1.(a) and 5.1.(p) to match the money in the block grant to language at the end of the block grant provisions and to clarify that the money being used in the Social Services Block Grant has been transferred from the TANF Block Grant.

Section 37. Pages 30-31.

- Amends G.S. 110-139.2(b1) to allow a financial institution to agree with the Child Support Enforcement Agency that notice of levies on bank accounts for child support arrears may be sent to the institution in a manner different from formal service under Rule 4 of the Rules of Civil Procedure if the institution agrees in writing to a different method anytime prior to notice of the service. Because formal service would normally be made to the registered agent of the corporation, or the corporate headquarters, the paperwork might be considerably delayed in getting to the department that effects the levy on the account. This amendment would allow the institution to have the notice sent directly to the appropriate department and would allow the notice to be sent by email or fax.

Section 38. Page 31.

- Recodifies G.S. 114-19.12 as 114-19.14, to avoid conflict.

Section 39. Page 31.

- Deletes paragraph that unnecessarily appears twice in G.S. 115C-84.2.

Section 40. Pages 31-32.

- Amends G.S. 115C-238.29D(d) by extending the terms of charters, and their renewals, from a maximum of five years to a maximum of 10 years. At least once every 5 years, the State Board of Education shall review each charter school's operations to ensure that the school is meeting the expected academic, financial, and governance standards. This change would take effect when it becomes law and would apply to charters granted or renewed after that date.
- Amends G.S. 115C-238.29F(e)(1) by requiring all charter school teachers in grades 6-12 to be college graduates if they teach in the core subject areas of math, science, social studies, and language arts. This section would become effective when it becomes law and would apply to persons employed by charter schools for the 2003-2004 and subsequent school years.

Section 41. Pages 32-33.

- Amends G.S. 115C-437 by removing the 10% cap on collection cost The University of North Carolina (UNC) is allowed to deduct from fines and forfeitures collected before the fines and forfeitures are allocated to the local school boards.

Section 42. Page 33.

- Creates a new G.S. 116-40.7 that provides for internal auditors within The University of North Carolina and its constituent institutions. The new statute would clarify that the working papers of UNC's internal auditors are not public records,

though their final reports are. This provision is similar to the internal auditor provisions applicable to those applicable to DHHS internal audits.

Section 43. Pages 33-34.

- Amends G.S. 116-238.1, enacted by S.L. 2003-284, to clarify that the tuition grant for students who graduate from the School of Science and Math is limited to the cost of tuition and must be reduced by other scholarships and grants that the student may receive for tuition.

Section 44. Pages 34-35.

- Amends G.S. 116-243 (Arboretum Board of Directors) to make gender-neutral the term "President of The University of North Carolina."

Section 45. Pages 35.

- Amends Article 6 of Chapter 120 to clarify number of agency reports made to General Assembly.

Section 46. Pages 35-36.

- Makes conforming changes to delete "State" before "Legislative Library" in several statutes.

Section 47. Page 36.

- Repeals G.S. 121-4(16) – a duplicate subdivision enacted in 1991 related to the operation of a restaurant at the NC Museum of History.

Section 48. Pages 36-40.

- Amends various sections of Chapter 131E to conform to changes made in 2001.
    - Substitutes "EMS personnel" for "ALS professionals" and to replace "sponsor hospital" with "EMS system".
    - Adds definitions of "EMS instructors" and "peer review committee".
    - Clarifies the authority of the NC Medical Care Commission to establish standards for EMS systems, EMS educational institutions, and specialty care transport programs.
    - Authorizes the establishment of regional trauma peer review committees and their responsibilities.
- Amends G.S. 143-509(9) to conform to a change made in S.L. 2002-179.

Section 49. Pages 40-41.

- Amends G.S. 135-3(8)c. and 115C-325(a)(5a) to allow retired teachers to return to teaching in a charter school and continue to collect retirement benefits, thereby treating them the same as retired teachers who return to traditional public schools.

Section 50. Page 41.

- Amends G.S. 135-40.8(e), as enacted in S.L. 2003-284, to clarify that the State Health Plan pays the same amount to out-of-plan providers when emergency services are required and provided by out-of-plan providers whether services are provided in-state or out-of-state.

Section 51. Page 42.

- Amends G.S. 136-179, as amended by S.L. 2003-284, to provide that the intrastate project that would complete 4-laning for US-74 would include the Shelby Bypass and Cleveland County (in addition to Polk and Rutherford Counties).

Section 52. Page 42.

- Amends G.S. 136-180(a), as amended by S.L. 2003-284, to correct the spelling of road name in Greensboro Loop. Changes "Lewis-Fleming" to "Lewiston-Fleming".

Section 53. Page 42.

- Recodifies G.S. 147-33.89, as enacted by S.L. 2003-172, as G.S. 147-33.90 to avoid a conflict with S.L. 2003-153.

Section 54. Pages 42-43.

- Amends G.S. 148-22.2 and 148-46.2 to correct an internal citation and change "Article" to "section".

Section 55. Pages 43-44.

- Clarifies that the Department of Correction must reimburse county jails for costs for housing prisoners for criminal sentences of 30 days or more. This would preclude payment for confinement for civil sentences (i.e. civil contempt). Local jails must submit invoices within one year of the date of commitment.

Section 56. Page 44.

- Modifies the temporary rulemaking authority for the certificate of need program under the State Medical Facilities Plan to provided that rules necessary for review criteria under the Plan may be adopted by temporary rules.

Section 57. Pages 44-45.

- Effective July 1, 2003, recodifies G.S. 150B-21.1(a11), as enacted by Section 3 of S.L. 2003-184, as G.S. 150B-21.1(a)(16), so as to reflect the rewrite of G.S. 150B-21.1 by S.L. 2003-229.

Section 58. Page 45.

- Directs the Revisor of Statutes to ignore purported amendment and recodification of a statute that expired before the effective date of the purported changes.

Section 59. Page 45.

- Eliminates Coroner's Office in Johnston County, effective upon the expiration of this coroner's current term.

Section 60. Page 45.

- Amends G.S. 163-34 to delete references to "constable", a term no longer used.

Section 61. Pages 45-47.

- Amends G.S. 163-35(b) to allow the State Board, by a vote of all the remaining members, to delegate to one or more of its members the authority to hear and decide on the dismissal of a county election director, whether that dismissal proceeding was initiated by the county board or by the State Board. This would spell out that the designees have the authority not only to conduct the hearing, but also to decide the case. While new to the statute, it would codify State Board practice.

Section 62. Page 47.

- Clarifies a new requirement under the federal HAVA election laws for determining whether a voter must prove identity the first time they vote following a "mail-in" registration. This amendment says that if a voter-registration applicant gives another person the job of taking their application form to the board of elections, the board of elections shall treat that form for HAVA I.D. purposes according to the manner the delegatee used in transporting the form. If the delegatee mails the form in, it's a registration by mail. If the delegatee hand-carries the form in, it's not a registration by mail.

Section 63. Page 47.

- Amends G.S. 163-278.7(b)(7) to clarify the board must keep any account number included in any report required to be filed with the board under Article 22A of Chapter 163 (Regulating Contributions and Expenditures in Political Campaigns) after March 1, 2003. (The "board" is the State Board of Elections for candidates for State, legislative, and judicial offices and the county or municipal board of elections for candidates for county and municipal offices.) This section would be effective on and after January 1, 2003.

Section 64. Page 47.

- Repeals G.S. 163-278.12A. This statute requires "any individual, person, political committee or entity" making expenditures for printed materials or advertisements naming a political candidate to file a report with the State Board of Elections.
- The Fourth Circuit Court of Appeals held this statute to be "unconstitutionally overbroad as a regulation of issue advocacy when a speaker advocates for or against a political candidate." *Perry v. Bartlett*, 231 F.3d 155 (4th Circuit 2000).

Section 65. Pages 47-48.

- Clarifies the Judicial Campaign Reform Act by setting out criteria that the State Board of Elections must use in establishing guidelines for permissible expenditures of public campaign funds. This provision requires that the State Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy.

Section 66. Page 48.

- Corrects reference in G.S. 168-2 to Department of Economic and Community Development (no longer exists) – now Department of Commerce.

Section 67. Pages 48-49.

- Amends G.S. 168-4.2 through G.S. 168-4.4 by (i) substituting "service animal" for "assistance dog" to conform to term used in the federal Americans with Disabilities Act, and (ii) adding "person with a seizure disorder" to the list of persons with disabilities who are allowed to have a service animal accompany them in public facilities, accommodations, and conveyances.

Section 68. Pages 49-50.

- Revises a special provision in the 2002 budget bill that governs how the local government in Scotland County is to appropriate funds for public schools each year. The changes simply clarify, for the sake of the school system and county commissioners in Scotland Co., how the calculation of the minimum appropriation is to be done.

Section 69. Pages 50-51.

- Removes the authority of the Orange County Human Relations Commission to regulate discrimination in employment. The Supreme Court ruled last month in Williams v. Blue Cross v. Orange County, No. 277PA01 (2003), that by enacting the local bill giving the commission that authority, the General Assembly violated Article II, Sec. 24(j) of the State Constitution. That section says there must be only statewide laws "Regulating labor, trade, mining, or manufacturing." The Court said the Orange County Human Relations Commission said up a separate scheme for doing that, adding protected categories of "familial status" and "veteran status" that aren't protected elsewhere in the State and providing a special

complaint procedure. They said this was an unconstitutional act regulating labor and trade. The amendment removes "employment" from the Orange Commission's jurisdiction, but still allows the Orange Commission to regulate discrimination in housing and public accommodations.

Section 70. Page 51.

- Repeals S.L. 1997-182, including G.S. 18B-1006(l), which authorizes the Alcohol Beverage Control (ABC) Commission to issue permits for the sale of alcoholic beverages within the Lumberton Economic Development and Tourist District. have been declared "void and unenforceable" by a North Carolina court as a violation of the State constitutional requirements for local and general laws.

Section 71. Page 51.

- Amends S.L. 2002-126 by deleting the requirement that OSBM issue a Request for Proposals to analyze DPI's operation and structure. Instead, OSBM will conduct the analysis and report to the State Board of Education, which will then report to the Joint Legislative Education Oversight Committee by March 15, 2004.

Section 72. Page 51.

- Amends Section 5 of S.L. 2002-142, a local law governing hunting in Pitt County. The change, effective October 3, 2002, would delete the prohibition on allowing dogs to run on posted land.

Section 73. Page 51.

- Repeals two session laws (S.L. 2002-159 and S.L. 2002-162) that made an original local act (applicable only in Craven, Nash and Pamlico Counties) applicable statewide and effective in all other counties July 1, 2003. The effect would be that the original act would continue to apply in Craven, Nash, and Pamlico Counties only, until January 1, 2004, when the old act will be repealed and the new act will become effective in all counties.
- S.L. 2002-96, as it originally passed, provided for removal of military discharge papers only in Nash, Craven, and Pamlico Counties. The two later session laws made the act applicable statewide with an effective date of July 1, 2003, for all other counties. After the law passed, it was determined that the system that was put into place to remove the discharge papers was impossible to implement in most counties because the records were intermingled with other public records. The new substantive provisions passed this session in House Bill 818 will repeal the original law and substitute a workable system, but that won't be effective until January 1, 2004.

Section 74. Page 51.

- S.L. 2003-31 has two Section 3's. This amendment will renumber the second Section 3 as Section 3.1.

Section 75. Page 51-52.

- Amends the introductory language in Section 1 of S.L. 2003-103 by deleting "statues" and substituting "statutes".

Section 76. Pages 52-53.

- Amends Section 2 of S.L. 2003-128, a local act applicable to the Town of Rutherfordton and Wake County, to add clarifying language. It deletes "county" and substitutes "county, city, or town" and their "governing bodies".

Section 77. Page 53.

- Amends G.S. 115C-264, as amended by S.L. 2003-147, to correct an internal reference to G.S. 143-129, the formal bidding requirement that no longer applies. Instead, G.S. 115C-522(a) incorporates the rest of Article 8 of Chapter 143, which does apply.
- Amends Section 12 of S.L. 2003-147, by correcting internal references to bill sections in the effective date provision.

Section 78. Page 53-54.

- Amends S.L. 2003-194, by extending the date by which UNC must provide to students information on meningitis vaccines. The date currently is the 2003-2004 academic year; this change would allow UNC to begin with the Spring 2004 semester.

Section 79. Page 54.

- Corrects introductory reference to statute being amended in Section 26.(e) of S.L. 2003-212.
- Deletes language from newly enacted G.S. 58-31-66, which prohibits public entities, as part of a public building or construction project, from requiring contractors, bidders, or proposers to procure a bond from a particular surety, agent, broker or producer. The language that would be deleted (i) allows public officers or employees (to approve the form, sufficiency or manner of execution of the surety bond selected by the bidder, (ii) allows public officers or employees to disapprove on a reasonable, nondiscriminatory basis the selected surety because of the surety's financial condition, and (iii) makes a public contract void ab initio if the law is violated.
- Changes in this section would take effect October 1, 2003.

Section 80. Page 54.

- Corrects an incorrect reference in the 2003 Budget Bill for availability to the correct name of the national Merrill-Lynch securities settlement known as the Conflicts of Interest Global Settlement.

Section 81. Pages 54-55.

- Amends Sec. 3.1 of S.L. 2003-284, by changing the second year of funding for State Construction - Urban from $14 million to $28 million and changing the corresponding total for 2004-2005 from $1,331,524,415 to $1,345,524,415. This would reflect final budget instructions given to staff.

Section 82. Page 55.

- Clarifies budget management flexibility for The University of North Carolina for the 2004-2005 fiscal year.

Section 83. Pages 55-56.

- Amends Sec. 7.5 of S.L. 2003-284 by deleting a paragraph repeated elsewhere.

Section 84. Page 56.

- Amends Section 10.5 of S.L. 2003-284 by authorizing DHHS to apply for a Medicaid waiver to provide for federal matching funds for limited prescription drug and insulin coverage, prescription assistance, and assistance in accessing primary care for elderly persons based on funds expended from the Health and Wellness Trust Fund.

Section 85. Pages 56-57.

- Adds a new Section 10A.2(a) to restore an added position in the money report when three items were rolled together for the Oxford Research Station. The money was properly identified in the money report, but there was no corresponding position count for the new maintenance mechanic that was associated with that item (see. p.H4 in the money report item # 36).

Section 86. Page 57.

- Corrects an internal reference in Section 11.4 of S.L. 2003-284.

Section 87. Page 57.

- Makes Section 17.1 of S.L. 2003-284 effective October 1, 2003, rather than July 1, 2003.

Section 88. Page 57.

- Amends Section 23.1 of S.L. 2003-284, which amends section 22.6 of last year's budget bill. The Department of Revenue wants authorization to use $3 million from the collection assistance fee account to support IT costs through the end of the 2004-05 fiscal year.

Section 89. Pages 57-58.

- Corrects a report date (from April 1, 2003 to April 1, 2004) for the Joint Legislative Transportation Oversight Committee's study on the project delivery process.

Section 90. Page 58.

- Amends Sec. 30.3 of S.L. 2003-284 by deleting line item for General Manager of Ports Railway Commission, which was repealed last year.

Section 91. Page 58.

- Amends Section 45.12 of S.L. 2003-284 to delete a reference to Section 45.9, which was repealed.

Section 92. Pages 58-59.

- Amends Section 46.1 of S.L. 2003-284 to allow Repair and Renovation COPS funds to be used in accordance with Section 31.5 of that act, which provides that 46% of the funds shall be allocated to UNC and 54% shall be allocated to the Office of State Budget and Management for repairs and renovations.

Section 93. Page 59.

- Corrects an incorrect reference in the lead-in provisions of Section 46.2 of S.L. 2003-284, 2003 Budget Bill.

Section 94. Pages 59-60.

- S.L. 2003-300 provides assistance to military personnel called to active duty in support of Operation Iraqi Freedom on or after January 1, 2003, by allowing the Governor to extend for up to 90 days the validity of an occupational license and to allow for the prorating of any renewal fee associated with an occupational license. The act refers to the definition of "occupational license" as defined in G.S. 93B-1. Although that definition does not specifically preclude occupational licenses issued by State agencies, such as a license to sell insurance, the term "occupational licensing board" in G.S. 93B-1 specifically excludes State agencies. This section clarifies that the authority of the Governor to extend the validity of occupational licenses for deployed military personnel includes occupational licenses issued by a State agency. It does so by setting out the definition of an occupational license rather than referring to Chapter 93B of the General Statutes.

Section 95. Page 60.

- Resolves a conflict where the same statute was amended by two different bills by recodifying the statute as amended by the second bill.

Section 96. Page 60.

- The Senate concurred in Senate Bill 236 on July 14th. If Senate Bill 236 becomes law, Section 9 of the act directs the Revenue Laws Study Committee to establish a study group composed of State tax professionals from accounting firms and

representatives of the Department of Revenue to work together on gathering appropriate data to conduct an analysis of the potential revenue impact of modifying the corporate income tax law to require consolidated returns. In an earlier version of the bill, Section 9 had required certain information to be included with corporate tax returns for the 2003 and 2004 tax years. The effective date of Section 9 in Senate Bill 236 continues to reflect these two taxable years. Section 9 needs to become effective when it becomes law and this section of the technical bill makes that change.

Section 97. Page 60.

- Amends G.S. 50B-3.1(h), created in SB 919, which has been ratified. The bill allows the judge to dispose of firearms under several sections of the law. It then goes on to state that "If a sale occurs . . .." However, the sections in the bill don't allow for a sale. However (again), some counties are exempt from the provisions of the statute (under other circumstances, not domestic violence cases), and the Sheriffs are allowed to hold sales of confiscated firearms. This amendment should take care of those counties, and also keep the designated statute sections applicable to the rest of the counties.

Section 98. Page 60.

- Changes all statutory references and session law references to "Public Campaign Financing Fund" to "Judicial Elections Fund" in the election laws.

Section 99. Pages 60-61.

- Authorized the proceeds from the sale of the chancellor's residence at Fayetteville State University to be retained by FSU and used for the construction of a new chancellor's residence.

Section 100. Pages 61-62.

- Provides that if the new State House and State Senate redistricting plans are somehow still legally pending (not finally approved by the US Justice Department under Section 5 of the Voting Rights Act on the day the candidate filing period begins February 9, 2004, the State Board of Elections is to postpone the May 4 primary till a later time. The Board would be required to move the filing period and primary for all local, State, and congressional offices together, so that there would be one filing period and primary for them all. The Board could not do away with the 2nd primary.

Section 101.

EFFECTIVE DATE: Unless otherwise provided, the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

H281-ARK-42 [v.1]

Date 7-15 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Berger

moves to amend the bill on page 52, between lines 2 and 3, by adding a new section to read:

"**SECTION 76.** Section 1 of S.L. 2003-110 reads as rewritten:

' **SECTION 1.** G.S. 20-141 is amended by adding a new subsection to read:
'(o) A violation of G.S. 20-123.2 shall be a lesser included offense in any violation of this section. No drivers license points or insurance surcharge shall be assessed on account of a violation of this subsection.' '",

and by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #2
(to be filled in by
Principal Clerk)

H281-ALB-105 [v.1]

Date 7/15, 2003

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Soles

moves to amend the bill on page x, line xx, by adding the following new section:

SECTION x.x. G.S. 160A-176.2 reads as rewritten:

"**§ 160A-176.2. Ordinances effective in Atlantic Ocean.**

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Calabash, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #3
(to be filled in by
Principal Clerk)

H281-ALN-62 [v.2]

Date 7/15 ,2003

Comm. Sub. [YES]
Amends Title [NO]
CSRN-53[v.37]

Senator Rand

moves to amend the bill on page #, line #,
by adding the following on that line:

"SECTION #. G.S. 108A-70.21(d), as amended by Section 10.29(a) of S.L.2003-284, reads as rewritten:

`(d) Cost-Sharing. – There shall be no deductibles, copayments, or other cost-sharing charges for families covered under the Program whose family income is at or below one hundred fifty percent (150%) of the federal poverty ~~level, except that fees for outpatient prescription drugs are applicable and shall be one dollar ($1.00) for each outpatient generic prescription drug and for each outpatient brand name prescription drug for which there is no generic substitution available. The fee for each outpatient brand name prescription drug for which there is a generic substitution available is three dollars ($3.00).~~ level. Families covered under the Program whose family income is above one hundred fifty percent (150%) of the federal poverty level shall be responsible for copayments to providers as follows:

(1) Five dollars ($5.00) per child for each visit to a provider, except that there shall be no copayment required for well-baby, well-child, or age-appropriate immunization services;

(2) Five dollars ($5.00) per child for each outpatient hospital visit;

(3) A six dollar ($6.00) fee for each outpatient prescription drug purchased; ~~one dollar ($1.00) fee for each outpatient generic prescription drug and for each outpatient brand name prescription drug for which there is no generic substitution available. The fee for each outpatient brand name prescription drug for which there is a generic substitution available is ten dollars ($10.00).~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H281-ALN-62 [v.2]

(4) Twenty dollars ($20.00) for each emergency room visit unless:
a. The child is admitted to the hospital, or
b. No other reasonable care was available as determined by the Claims Processing Contractor of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

Copayments required under this subsection for prescription drugs apply only to prescription drugs prescribed on an outpatient basis.'".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #4
(to be filled in by
Principal Clerk)

H281-ARR-54 [v.6]

Date 7-15 ,2003

Comm. Sub. [YES]
Amends Title [NO]
H281-CSRH-53 [v.37]

Senator Gunn

moves to amend the bill on page 45, line 36, through page 47, line 15, by inserting after that line the following:

"**SECTION 61.** G.S. 163-35(b) reads as rewritten:

'(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State

Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered ~~by the State Board of Elections,~~ after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered ~~by the Board~~ after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of ~~Elections.~~ Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. ~~The State Board of Elections shall notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings.~~ Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H281-ARR-54 [v.6]

Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection. ~~For the purposes of this subsection, the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.~~'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #5
(to be filled in by
Principal Clerk)

H281-ARH-73 [v.1]

Date 7-15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
H281-CSRH-53[v.37]

Senator RAND

moves to amend the bill on page 29, lines 35-36, by inserting between the lines the following new language to read:

"~~All fees collected for this purpose shall be returned to the budget of the Division of Child Development and used for the implementation of this section.~~ Failure to pay the license monitoring fee shall result in suspension of a license unless the fee is paid as governed by G.S. 150B-3.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #6
(to be filled in by
Principal Clerk)

H281-ARH-71 [v.3]

Date 7/15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
H281-CSRH-53

Senator Rand

moves to amend the bill on page 58, lines 25-26, by inserting between the lines:

"**SECTION 91.(a)** Section 30.20.(k) of S.L. 2003-284 is repealed.

SECTION 91.(b) G.S. 135-106(a), as rewritten by Section 3.20.(l) of S.L. 2003-284, reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is unable to perform any occupation ~~for which the beneficiary or participant is reasonably qualified for by~~ or employment commensurate to the beneficiary's or participant's education, training or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or

participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience, the Department of State Treasurer and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 6
(to be filled in by
Principal Clerk)

H281-ARH-71 [v.3]

SECTION 91.(c) Subsection (a) of this section becomes effective July 1, 2003. Subsection (b) of this section becomes effective July 1, 2004, and applies only to persons who are not vested in the disability plan in question on July 1, 2004.";

and by renumbering the remaining sections.

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. # 7
(to be filled in by
Principal Clerk)

H281-ASF-31 [v.1]

Date 7-15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
h281-csrh-53[v.37]

Senator Linda Garrou

moves to amend the bill on page 31, lines 18-19, by adding between the lines a new section to read:

"**SECTION 40.(a)** G.S. 115C-238.29B(a) reads as rewritten:

'(a) Any person, group of persons, or nonprofit ~~corporation~~ corporation, including a local board of education, seeking to establish a charter school may apply to establish a charter school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.'

SECTION 40.(b) G.S. 115C-238.29E reads as rewritten:

'**§ 115C-238.29E. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its ~~charter.~~charter or if the local board of education was the applicant for the charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the ~~application.~~application unless a local board of education applied for and

was granted a charter for the conversion of an existing public school or for the creation of a new charter school. In such a case, a charter school shall be operated by the local board of education or by a board of directors appointed by the local board of education.

(c) A charter school shall operate under the written charter signed by the entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning ~~authority.~~authority unless the local board of education applied for and was granted the charter for the conversion of a public school or the creation of a new charter school. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 7
(to be filled in by
Principal Clerk)

H281-ASF-31 [v.1]

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.'

SECTION 40.(c) This act applies only to the Winston-Salem/Forsyth School System.";

and by renumbering the remaining sections accordingly.

SIGNED Linda Garrou
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #8
(to be filled in by
Principal Clerk)

H281-ARH-72 [v.1]

Date 7-15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
H281-CSRH-53[v.37]

Senator BERGER

moves to amend the bill on page 51, line 36, by rewriting the line to read:

"**SECTION 72.(b)** This section becomes effective October 3, 2002. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #9
(to be filled in by
Principal Clerk)

H281-ART-28 [v.4]

Date 7-15 ,2003

Comm. Sub. [YES]
Amends Title [NO]
H281-CSRH-53 [v.37]

Senator LUCAS

moves to amend the bill on page 44, lines 14 through 22,
by rewriting those lines to read:

"**SECTION 56.(a)** G.S. 150B-21.1(a), as amended by Section 2 of S.L. 2003-229, reads as rewritten:

'(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A recent federal regulation.
(5) A recent court order.
(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
(7) The need for the Wildlife Resources Commission to establish any of the following:
    a. No wake zones.

b. Hunting or fishing seasons.
c. Hunting or fishing bag limits.
d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
a. In accordance with the provisions of G.S. 163-22.2.
b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:
a. Repealed by Session Laws 2000, ch. 148, s. 5, effective July 1, 2002.
b. Repealed by Session Laws 2000, ch. 69, s. 5, effective July 1, 2003.

(13) The need for the Secretary of Transportation to adopt temporary rules concerning the permitted height of mobile and modular homes.

(14) The need for the Secretary of Transportation to adopt temporary rules pursuant to G.S. 113A-11(b) to establish a class of minimum criteria projects.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

(a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of this subsection means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.'

SECTION 56.(b) G.S. 150B-21.1(a1), as enacted by Section 2 of S.L. 2003-229, reads as rewritten:

'~~(a1)~~(a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. The statement must be signed by the head of the agency adopting the temporary rule.'

SECTION 56.(c) G.S. 150B-21.1A(a), as enacted by Section 3 of by S.L. 2003-229, reads as rewritten:

'(a) Adoption. – An agency may adopt an emergency rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety. When an agency adopts an emergency rule, it must simultaneously commence the process for adopting a temporary rule by submitting the rule to the Codifier of Rules for publication on the Internet in accordance with ~~G.S. 150B-21.1(a1).~~ G.S. 150B-21.1(a2). The Department of Health and Human Services or the appropriate rule-making agency within the Department may adopt emergency rules in accordance with this section when a recent act of the General Assembly or the United States Congress or a recent change in federal regulations authorizes new or increased services or benefits for children and families and the emergency rule is necessary to implement the change in State or federal law.'

SECTION 56.(d) G.S. 150B-21.12(c), as amended by Section 10 of S.L. 2003-229, reads as rewritten:

'(c) Changes. – When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in ~~G.S. 150B-21.1(a1)~~ G.S. 150B-21.1(a2) and G.S. 150B-21.1(b).'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 9
(to be filled in by
Principal Clerk)

H281-ART-28 [v.4]

SECTION 56.(e) Section 14 of S.L. 2003-229 reads as rewritten:".

SIGNED Joanne Lucas
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #10
(to be filled in by
Principal Clerk)

H281-ALY-24 [v.1]

Date 7-15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
PCS

~~Representative~~ Sen. Metcalf

moves to amend the bill on page 20, lines 32-33, by adding the following between those lines:

"**SECTION** 23.1. If Senate Bill 668, 2003 General Assembly, becomes law, then G.S. 18B-1001.1(b) reads as rewritten:

"(b) A wine shipper permittee that ships to addresses in the State more than 1,000 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell the products of the wine shipper permittee under Article 12 of this Chapter if the wine shipper permittee is contacted by a wholesaler that wishes to sell the products of the wine shipper permittee. This provision shall not be construed to require the wine shipper permittee to appoint the wholesaler that originally contacted the wine shipper permittee. Wine purchased by a resident of the State at the premises of the wine shipper permittee and shipped to an address in the State under G.S. ~~18B-109(b)~~18B-109(d) shall not be included in calculating the total of 1,000 cases per year."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #11
(to be filled in by
Principal Clerk)

H281-ARH-74 [v.1]

Date 7/15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
H281-CSRH-53[v.37]

Senator RAND

moves to amend the bill on page 42, lines 29-30, by inserting between the lines the following new section to read:

"**SECTION 53.(a)** G.S. 143B-437.51 reads as rewritten:

`**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

...

(2) Base years. – The first ~~two complete calendar years~~ 24 months following the effective date of an agreement.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State. A `business' may be a division or smaller operating unit of a business organization if the Committee makes an explicit finding that this designation is necessary to secure the project and develops terms in a Community Economic Development Agreement to ensure that positions or employees of the business or of a related entity that exist in the State and that are not part of the project are not transferred or shifted to create or fill eligible positions.

...'

SECTION 53.(b) G.S. 143B-437.54(d) reads as rewritten:

`(d) ~~Public Notice. – The Committee shall do all of the following at least 15 business days prior to the adoption of or amendment to any proposed criteria:~~

~~(1) Publish the proposed criteria on the Department of Commerce's web site.~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 11
(to be filled in by
Principal Clerk)

H281-ARH-74 [v.1]

~~(2) Provide notice to persons who have requested notice of proposed criteria.~~

~~(3) Accept oral and written comments on the proposed criteria.~~

(d) Public Notice. At least 20 business days before the effective date of any criteria or non-technical amendments to criteria, the Committee must publish the proposed criteria on the Department of Commerce's web site and provide notice to persons who have requested notice of proposed criteria. In addition, the Committee must accept oral and written comments on the proposed criteria during the 15 business days beginning on the first day that the Committee has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.'";

and by renumbering the remaining sections.

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. #12
(to be filled in by
Principal Clerk)

H281-ALY-25 [v.2]

Date 7-15 ,2003

Comm. Sub. [NO]
Amends Title [NO]
PCS

Senator Garrou

moves to amend the bill on page , lines , by adding the following between those lines:

"**SECTION** . The following position and position number for position reductions in the Department of Revenue, as provided in the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, June 28, 2003, is amended as follows: in Project Tax Collect, delete 'Revenue Officer I - # 4784-000-0076-639' and substitute 'Revenue Officer I - #4784-0000-0074-116'. "

SIGNED Linda Garrou
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. # 13
(to be filled in by
Principal Clerk)

H281-ALD-9 [v.3]

Date 7-15 ,2003

Comm. Sub. [YES]
Amends Title [NO]
H281-CSRH-53

Senator GARRou

moves to amend the bill on page , lines 26 and 27, by inserting between those lines the following:

"**SECTION 79.1.(a)** The Department of Environment and Natural Resources may identify positions in the Administrative Divisions and Regional Offices, in addition to the operating costs in the Administrative Divisions and Regional Offices, to comply with a reduction of two hundred thousand dollars ($200,000) for the 2003-2004 fiscal year and for the 2004-2005 fiscal year in operating support in the Administrative Divisions and Regional Offices required by Section 2.1, S.L. 2003-284, as set forth in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets. Notwithstanding G.S. 143-23 or G.S. 143-34.1, the Department of Environment and Natural Resources may continue and support the positions identified under this subsection from receipts rather than from its General Fund appropriation in order to fulfill the reduction of two hundred thousand dollars ($200,000) under this subsection.

SECTION 79.1.(b) The Department of Environment and Natural Resources may identify operating support reductions in the Division of Parks and Recreation, in addition to reductions to seasonal staff in the Division of Parks and Recreation, to comply with a reduction of one hundred forty-four thousand dollars ($144,000) for the 2003-2004 fiscal year and for the 2004-2005 fiscal year in seasonal staff in the Division of Parks and Recreation required by Section 2.1, S.L. 2003-284, as set forth in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets.

SECTION 79.1.(c) The Department of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations no later than thirty days after the 2003 Regular Session of the 2003 General Assembly adjourns

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 281

AMENDMENT NO. 13
(to be filled in by
Principal Clerk)

H281-ALD-9 [v.3]

to a date certain the specific line items from which the reductions under subsection (a) and subsection (b) of this section were identified."

SIGNED Linda Harrison
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

7-15-03 PM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jamie Dyer	SBE
DAVID BARNES	Poyner Spruill LLP
Lucius Pullen	Attorney
Bill Hales	Jordan Price
Suzanne Williams	NCCS
John Phelps	NCLM
Sabah Rafik	VIF
Cam Coley	BPMHL
Tommy Hardin	Hardin Const
Dina DiMaio	NCBA
Lisa Martin	NC Home Builders Assn

VISITOR REGISTRATION SHEET

J-1 Comm. — 7-15-03 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
[signature]	CAA
Allan Shang MD	Doctor of The Day - Dept of Anesthesiology Duke University Medical Center
- Ken Melton	Alley Associates, Inc
Mr. Tom Sri Lanka	NCRMA
Liz DeHart	V.I.P.
Doug Howey	NCPMA
Gary Harris	NCPMA
John McHugh	Lobbyist
Henry Jones	Attorney Raleigh
John Rust	NCFPC

VISITOR REGISTRATION SHEET

J-1 Comm. — 7-15-03 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peggy Mayer	GPA
John Bussian	NC Press Assn.
Pamela Best	AOC
Steve Woodson	NCFB
Michael Houses	NCAE
Robin Smith	DENR
Paula A. Hoyt	Covenant w/NC's Children
Jessica Dandy	" " "
Soren Schmidt	NC Justice & Community Dept Center
Judy Walton	DHHS - Medicaid Agency
Rick Zechini	NC Assn of REALTORS
Adam Stallings	Hunton & Williams

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	July 16, 2003	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1026	Worthless Check Program/Extend Statewide.	Representative Sexton, Sr.
SB 753	Qualif. for Magistrates/Juvenile Cust. Pilot.	Senator Jenkins

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

July 16, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:10 a.m. with six members present. He introduced Pages, Laura-Nelle Parnell from Charlotte, NC, Zak Bradley from Arden, NC and Michelle Casper from Rocky Mount, NC.

HB-1026 (Worthless Check Program/Extend Statewide) was introduced by Senator Clodfelter. Bill sponsor, Representative Wayne Sexton explained that the bill would authorize the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. See attached Bill Summary for further information. Senator Vernon Malone had a question. Rep. Sexton answered the question. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

SB-753 (Qualif. For Magistrates/Juvenile Cust. Pilot) Committee Substitute was introduced by Senator Clodfelter. In the absence of bill sponsor, Senator Clark Jenkins, Representative Rick Glazier explained the House version of SB-753, back in the Senate for concurrence, would expand the qualifications to be appointed a magistrate to include a person who had previously served at least 8 years as the clerk of superior court in a NC county. This would be an alternative to the current requirement of a 4-year college degree or a 2-year degree and 4 years of relevant work experience, and it would set up a pilot program in Cumberland County to address the issue of conflicting child custody orders. See attached Bill Summary for further information. Senator's Vernon Malone and Patrick Ballantine had questions. Rep. Glazier and Ms. Jo McCantz, from Administrative Office of the Courts answered the questions. Senator Malone made a motion that the Committee does concur. All members voted yes to Favorable as to Concurrence. Motion carried.

Being no further business the meeting adjourned at 10:20 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, July 16, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **1026** Worthless Check Program/Extend Statewide.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

FAVORABLE AS TO CONCURRENCE

S.B.(CS #1) **753** Qualif. for Magistrates/Juvenile Cust. Pilot.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1026

Short Title:	Worthless Check Program/Extend Statewide.	(Public)
Sponsors:	Representatives Sexton; Moore and Pate.	
Referred to:	Judiciary IV.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PROGRAM FOR THE COLLECTION OF WORTHLESS CHECKS AVAILABLE STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) is repealed.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1026:
Worthless Check Program/Extend Statewide.

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Reps. Moore, Pate,and Sexton
Date:	July 16, 2003	**Summary by:**	Hal Pell*
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1026 would authorize the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. The act would become effective when it becomes law.***

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. Current law authorizes the District Attorney to initiate the program in specified counties. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

BILL ANALYSIS: This bill:

1) Authorizes the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible.

2) Modifies the reporting requirement for the AOC by requiring that it report every other year on the economic viability of the worthless check collection programs.

3) Requires the AOC to determine the economic feasibility of establishing a worthless check collection program in the six prosecutorial districts and then to authorize programs in those districts where economically feasible before it authorizes a program in any other district.

CURRENT LAW:

I. Worthless Check Offense

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:

  1) The check is drawn upon a nonexistent account.
  2) The check is drawn upon an account the drawer knows to be closed.
  3) The conviction is the person's fourth or subsequent conviction for this offense.

- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**.

[OVER]

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

III. The Collection of Worthless Checks Fund

The proceeds from the $60 fee are remitted to the State by the clerk of court in the county in which the program is established and are credited to the Collection of Worthless Checks Fund. The revenue in the Fund does not revert at the end of the fiscal year and may be used solely for the expenses of the programs established for the collection of worthless checks.

IV. Reporting Requirement

The Administrative Office of the Courts (AOC) is required to report annually to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the implementation of the worthless check collection programs, including their effectiveness in obtaining restitution and the amount of time saved from not prosecuting worthless check cases.

*Summary contribution by Trina Griffin, Staff Attorney

H1026-smrk-01

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

III. The Collection of Worthless Checks Fund

The proceeds from the $60 fee are remitted to the State by the clerk of court in the county in which the program is established and are credited to the Collection of Worthless Checks Fund. The revenue in the Fund does not revert at the end of the fiscal year and may be used solely for the expenses of the programs established for the collection of worthless checks.

IV. Reporting Requirement

The Administrative Office of the Courts (AOC) is required to report annually to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the implementation of the worthless check collection programs, including their effectiveness in obtaining restitution and the amount of time saved from not prosecuting worthless check cases.

*Summary contribution by Trina Griffin, Staff Attorney

H1026-smrk-01

HOUSE BILL 1026:
Worthless Check Program/Extend Statewide.

BILL ANALYSIS

Committee:	Senate Judiciary 1	**Introduced by:**	Reps. Moore, Pate,and Sexton
Date:	July 16, 2003	**Summary by:**	Hal Pell*
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1026 would authorize the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. The act would become effective when it becomes law.***

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. Current law authorizes the District Attorney to initiate the program in specified counties. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

BILL ANALYSIS: This bill:

1) Authorizes the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible.

2) Modifies the reporting requirement for the AOC by requiring that it report every other year on the economic viability of the worthless check collection programs.

3) Requires the AOC to determine the economic feasibility of establishing a worthless check collection program in the six prosecutorial districts and then to authorize programs in those districts where economically feasible before it authorizes a program in any other district.

CURRENT LAW:

I. Worthless Check Offense

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:

  1) The check is drawn upon a nonexistent account.
  2) The check is drawn upon an account the drawer knows to be closed.
  3) The conviction is the person's fourth or subsequent conviction for this offense.

- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**.

[OVER]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 3

SENATE BILL 753*

Judiciary I Committee Substitute Adopted 4/21/03
House Committee Substitute Favorable 6/9/03

Short Title: Qualif. for Magistrates/Juvenile Cust. Pilot. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES AND TO ESTABLISH A PILOT PROGRAM IN TWELFTH JUDICIAL DISTRICT TO ADDRESS CONFLICTING CHILD CUSTODY ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least eight years' experience as the clerk of superior court in a county of this State or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2.(a) The Administrative Office of the Courts, in consultation with the Department of Health and Human Services, shall establish a pilot program in the Twelfth Judicial District that addresses the issue of conflicting child custody orders. To the extent that this act or the program established pursuant to it conflicts with any State law, the program supersedes that law. However, the Department of Health and Human Services shall ensure that federal funding is not jeopardized.

SECTION 2.(b) Under this program, when a court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

(1) The court in the juvenile proceeding may stay any other civil action in this State in which the custody of the juvenile is an issue.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to retain jurisdiction in the juvenile proceeding.

(3) The court in the juvenile proceeding may order that any civil action or claim for custody filed in the pilot judicial district be consolidated with the juvenile proceeding.

(4) If a civil action or claim for custody has been filed in a district other than the pilot judicial district, then the court in the juvenile proceeding may, after consulting with the court in the other district, order that the civil action or claim for custody be transferred to the pilot judicial district or may order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the other district.

(5) The court may establish a mechanism for determining the legal status of a juvenile after jurisdiction of the juvenile court terminates, including a determination as to who has custody of the juvenile and under what circumstances custody may subsequently be changed.

SECTION 2.(c) The Administrative Office of the Courts shall evaluate the pilot program and report its findings and recommendations to the 2005 General Assembly prior to its convening.

SECTION 3. This act is effective when it becomes law. Section 2 of this act expires June 30, 2005.

SENATE BILL 753:
Qualif. for Magistrates/Juvenile Cust. Pilot

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	July 16, 2003	**Summary by:**	William R. Gilkeson
Version:	Third Edition		Committee Co-Counsel

SUMMARY: The House-passed version of Senate Bill 753, back in the Senate for concurrence, would do 2 things:

- ***Expand the qualifications to be appointed a magistrate to include a person who had previously served at least 8 years as the clerk of superior court in a NC county. This would be an alternative to the current requirement of a 4-year college degree or a 2-year degree and 4 years of relevant work experience. Effective when it becomes law.*** *Section 1 of the bill.*
- ***Set up a pilot program in Cumberland County to address the issue of conflicting child custody orders. Effective when it becomes law; to expire 5-30-05.*** *Section 2.*

Changes from Senate Version

-- Drops the years of clerk of court experience to 8 years. **The Senate version set 12 years.**

-- Adds Section 2 establishing the Juvenile Custody Pilot Program, **which was not in the Senate version at all.** The pilot program was adapted from HB 1033, which was a statewide bill. The Administrative Office of the Courts, in consultation with the Department of HHS, would establish the program in the 12th Judicial District, which consists of Cumberland County. Under the pilot program, if a court obtains custody of a child because the child is alleged to be abused, neglected, or dependent, that court is empowered in 5 ways:

1. It may stay any other NC civil action in which the custody of the juvenile is an issue.
2. An order it enters in the case controls over a conflicting order in another civil custody action, as long as the court retains jurisdiction in the juvenile proceeding.
3. It may order that any civil action or claim for custody in Cumberland County be consolidated with the juvenile proceeding.
4. It may order a civil action or claim for custody filed outside Cumberland County to be moved to Cumberland, or may transfer the juvenile proceeding to the other district. It must consult with the other court before doing either of those things.
5. It may establish a mechanism for determining the legal status of the juvenile after its own jurisdiction terminates, including arrangements for custody.

DHHS is to ensure that the pilot program does not jeopardize federal funding. AOC is to evaluate the program and report to the 2005 General Assembly before it convenes. The pilot program expires June 30, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 753*

Short Title:	Qualifications for Magistrates.	(Public)
Sponsors:	Senators Jenkins; and Lucas.	
Referred to:	Judiciary I.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least 12 years' experience as a clerk of superior court in this State, or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

7-16-03 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J. McCants	AOC
E. Walker	AOC
BRUCE THOMPSON	PARKER POE
Andy Ellen	NCRMA
Anne Winner	
Bill Carlson	NCATL
Rob Schofield	N.C. Justice Center
Sue Edwards	NC Justice Center

JUDICIARY 1 COMMITTEE

JULY 17, 2003

MINUTES

Senator Dan Clodfelter, Chair called the meeting to order at 4:10 pm around his desk in the Senate Chamber with a majority of members present.

HB-754 (Qualifications For Magistrates) Committee Substitute was introduced by Senator Clodfelter. In the absence of bill sponsor Representative Bill Culpepper, Senator Walter Dalton explained the bill, and moved for adoption of the Committee Substitute. All members voted yes. Motion carried. No discussion. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

Meeting adjourned at 4:28 pm.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

JUDICIARY 1 COMMITTEE

July 17, 2003

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 11:45 a.m. around his desk in the Senate Chamber with seven members present.

HB-11 was introduced. No discussion. Senator Wib Gulley moved for a Favorable report. All members voted yes. Motion carried.

No further business. Meeting adjourned at 11:50 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 754

Committee Substitute Favorable 4/23/03

Short Title: Qualifications for Magistrates. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least eight years' experience as a clerk of superior court in this State or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 754

Short Title:	Qualifications for Magistrates.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary IV.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have <u>at least 12 years' experience as a clerk of superior court in this State, or shall have</u> a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, July 17, 2003

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **11** Repeal Unconstitutional Statutes.

Draft Number:	PCS 60396
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **2**

HOUSE BILL 11

Senate Judiciary I Committee Substitute Adopted 7/17/03

Short Title: Ban Sexually Explicit Conduct. (Public)

Sponsors:

Referred to:

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO PREVENT THE NEGATIVE SECONDARY EFFECTS CAUSED BY SEXUALLY EXPLICIT CONDUCT ON PREMISES LICENSED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

Whereas, the United States District Court for the Middle District of North Carolina has issued a preliminary injunction, in the case of Carandola v. Bason, enjoining the State of North Carolina from enforcing regulations which prohibit certain sexually explicit conduct on premises licensed by the Alcoholic Beverage Control Commission, and

Whereas, the federal District Court concluded that the regulations are likely to be held to be unconstitutional, and

Whereas, upon review of the federal District Court decision in Carandola, the United States Circuit Court of Appeals for the Fourth Circuit has found that the federal District Court did not abuse its discretion, and has allowed the injunction to remain in place, and

Whereas, the Circuit Court of Appeals for the Fourth Circuit has stated that entertainment such as nude or topless dancing at bars and clubs has "a long history of spawning deleterious effects," including "prostitution and the criminal abuse and exploitation of young women," and

Whereas, the General Assembly has reviewed studies of the secondary effects of sexually oriented businesses that have been conducted in locations across the United States, including: Phoenix, Arizona; Los Angeles, California; Minneapolis, Minnesota; Austin, Texas; New York City, New York; Oklahoma City, Oklahoma; and other cities, and

Whereas, studies show that negative secondary effects of sexually oriented businesses include increases in crime, such as prostitution, drug offenses, assaults, and sex crimes, and

Whereas, it is not the intent of the General Assembly to suppress the conduct of entertainment at premises licensed by the Alcoholic Beverage Control Commission,

but it is the desire of the General Assembly to address the harmful secondary effects of such entertainment, including higher crime rates, public sexual conduct, sexual assault, prostitution, and other secondary negative effects, and

Whereas, it is the intent of the General Assembly to prohibit entertainment at premises licensed by the Alcoholic Beverage Control Commission that provides an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, and the spread of sexually transmitted diseases. Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1005(a) reads as rewritten:

"(a) Certain Conduct. – It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

(1) Any violation of this Chapter;

(2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons; or

(3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts.

~~(4) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;~~

~~(5) Any entertainment that includes or simulates sexual intercourse or any other sexual act; or~~

~~(6) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.~~"

SECTION 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1005.1. Sexually explicit conduct on licensed premises.**

(a) It shall be unlawful for a permittee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

(1) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;

(2) Any conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual act;

(3) Any conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals; or

(4) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.

(b) Supervision. – It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

(c) Exception. – This section does not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted

to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 11

Short Title:	Repeal Unconstitutional Statutes.	(Public)
Sponsors:	Representatives Stam; Culp and Pate.	
Referred to:	Judiciary I.	

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL ONLY THOSE STATUTES WHICH HAVE BEEN DECLARED UNCONSTITUTIONAL BY A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND FROM WHICH NO APPEAL HAS BEEN TIMELY PERFECTED OR THE APPEAL HAS BEEN FULLY CONCLUDED ADVERSELY TO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.12A is repealed.

SECTION 2. S.L. 1997-182 is repealed. This also repeals G.S. 18B-1006(l).

SECTION 3. G.S. 18B-1006(m) reads as rewritten:

"(m) Interstate Interchange Economic Development Zones. –

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

b. Operates ABC stores;

c. Borders on another state; and

d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

a. Located within one mile of any interstate highway interchange in that county.
b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).

~~(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:~~

~~a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.~~
~~b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.~~
~~c. Operates ABC stores.~~
~~d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.~~

~~This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection.~~"

SECTION 4. G.S. 18B-1006(j)(4) is repealed.

SECTION 5. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General

Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. ~~Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in § 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 6. G.S. 1-44.2(b) reads as rewritten:

"(b) ~~Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership.~~ The presumption established by this section is rebuttable by showing that a party has good and valid title to the land."

SECTION 7. This act is effective when it becomes law.

JUDICIARY 1 COMMITTEE

2004 SESSION

BOOK 1 OF 1

JUDICIARY 1 COMMITTEE

MEMBERS

Senator Charlie Albertson

Senator Phillip Berger – Vice Chair

Senator Dan Clodfelter - Chair

Senator Robert Carpenter

Senator Linda Garrou

Senator Cecil Hargett

Senator Hamilton Horton

Senator David Hoyle

Senator Ralph Hunt

Senator Clark Jenkins

Senator Jeanne Lucas

Senator Vernon Malone

Senator Martin Nesbitt

Senator Tony Rand

Senator R.C. Soles – Vice Chair

Senator Tony Rand

Senator Woody White

Principal Clerk ____
Reading Clerk ____

Corrected: June 3, 2004

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 3, 2004	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1076	State Highway Patrol Authority.	Senator Rand
SB 1078	Vehicle Control Signs and Signals.	Senator Jenkins
SB 1083	Staggered Issuance-Commercial/Dealer Plates.	Senator Jenkins
SB 1086	Public Transit Deceleration Lamps.	Senator Jenkins
SB 1089	DOT Authority to Receive Funds from Local Gov.	Senator Jenkins
SB 1090	HOV Lanes - Emergency Vehicles.	Senator Jenkins

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 3, 2004

Minutes

Vice Chairman, Senator R.C. Soles in the absence of Senator Dan Clodfelter, Chair, called the meeting to order at 10:07 am, with thirteen members present. Senator Soles introduced Pages, Nathan and Bryceton Proctor from Greensboro, NC, Maggie McRae, from Sanford, NC and Mary Christoph, from Mebane, NC. He also introduced three new members on the J1 Committee, Senator's Martin Nesbitt, Ralph Hunt and Woody White.

SB 1078 (Vehicle Control Signs and Signals) Committee Substitute. Was introduced by Sen. Soles. Senator Jeanne Lucas moved for acceptance of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Senator Clark Jenkins explained that the bill would amend the vehicle control sign and signal law to allow horizontal, in addition to the traditional vertical, traffic signals, to standardize and clarify language about traffic at intersections, and in the red light camera laws governing the municipalities of Wake County and the City of Concord, change the source for engineering standards for determining how long a light shall remain yellow. See Bill Summary for further information. There was no discussion. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-1083 (Staggered Issuance-Commercial/Dealer Plates) was introduced by Senator Soles. Bill sponsor, Senator Clark Jenkins explained that the bill would allow for commercial license plates and dealer license plates to be issued on a staggered basis throughout the year and would stagger the terms of motor vehicle dealers' and manufacturers' licenses. The bill is a recommendation of the Joint Legislative Transportation Oversight Committee. See Bill Summary for further information. There was no discussion. Senator Woody White moved for a Favorable Report. All members voted yes. Motion carried.

SB-1086 (Public Transit Deceleration Lamps) Committee Substitute was introduced by Senator Soles. Senator Linda Garrou moved for acceptance of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Clark Jenkins explained that the bill would allow public transit vehicles to be equipped with high-mounted amber lamps on the rear that would flash to warn that the vehicle is slowing down. The Joint Legislative Transportation Oversight Committee recommended the change. See Bill Summary for further information. No discussion. Senator Phillip Berger moved for a Favorable Report. All members voted yes. Motion carried.

SB-1089 (DOT Authority to Receive Funds from Local Gov.) was introduced by Senator Soles. Bill sponsor, Senator Clark Jenkins explained that the bill would allow the Department of Transportation to receive funds from local governments in order to advance the construction schedule of roads included in the Transportation Improvement Program. The Joint Legislative Transportation Oversight Committee recommended the change. See Bill Summary for further information. Senators Phillip Berger, Charlie Albertson and Jeanne Lucas had questions. Senator Jenkins answered the questions. No further discussion. Senator Martin Nesbitt moved for a Favorable Report. All members voted yes. Motion carried.

SB-1090 (HOV Lanes Emergency Vehicles) Committee Substitute was introduced by Senator Soles. Senator David Hoyle moved for acceptance of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Clark Jenkins explained that the bill would allow a driver to go into or out of a High Occupancy Vehicle (HOV) lane on a street or highway, even if they would not otherwise be permitted to do so, to avoid an emergency vehicle, a disabled vehicle, or debris. The Joint Legislative Transportation Oversight Committee recommended the change. See Bill Summary for further information. No discussion. Senator David Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

SB-1076 (State Highway Patrol Authority) was introduced by Senator Soles. Bill sponsor, Senator Tony Rand explained that the bill would specify that the State Highway Patrol is to operate weigh stations and would permit non-sworn State Highway Patrol personnel to operate the weigh stations. See Bill Summary for further information. Senator's Jeanne Lucas, David Hoyle, Charlie Albertson, Martin Nesbitt and Phillip Berger had questions. Senator Rand asked Ms. Casandra Skinner, Special Assistant to Secretary Bryan Beatty, Mr. Eddie Caldwell, NC Sheriff's Association and Major Charlie Carden from the State Highway Patrol to answer questions and speak on the bill. There was some question about the language in the bill, and Senator Soles stated that the bill would be removed from the agenda for clarification of language. It will be brought back to committee at a later date.

Senator Soles introduced Mr. Klaus Vdlz, a visitor from Munster, Germany who was here through the International Visitors Program. He is Director General of the European Parliament. He spoke about the chambers of parliament and their procedures of government in his country. Several members had questions that were answered by Mr. Vdlz. He thanked the Committee for having him as a guest, and said he would have a lot to share with his co-horts in Germany.

Being no further business the meeting adjourned at 10:56 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, June 07, 2004

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1083** Staggered Issuance-Commercial/Dealer Plates.
Sequential Referral: None
Recommended Referral: None

S.B. **1089** DOT Authority to Receive Funds from Local Gov.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1078** Vehicle Control Signs and Signals.
Draft Number: PCS55296
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1086** Public Transit Deceleration Lamps.
Draft Number: PCS55295
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1090** HOV Lanes - Emergency Vehicles.
Draft Number: PCS15287
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1083*

Short Title:	Staggered Issuance-Commercial/Dealer Plates.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Judiciary I.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STAGGERED ISSUANCE OF COMMERCIAL LICENSE PLATES, DEALER LICENSE PLATES, AND MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-64(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, registration plates shall be retained by the owner thereof upon disposition of the vehicle to which assigned, and may be assigned to another vehicle, belonging to such owner and of a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon proper application to the Division and payment of a transfer fee and such additional fees as may be due because the vehicle to which the plates are to be assigned requires a greater registration fee than that vehicle to which the license plates were last assigned. In cases where the plate is assigned to another vehicle belonging to such owner, and is not of a like vehicle category within the meaning of G.S. 20-87 and 20-88, the owner shall surrender the plate to the Division and receive therefor a plate of the proper category, and the unexpired portion of the fee originally paid by the owner for the plate so surrendered shall be a credit toward the fee charged for the new plate of the proper category. Provided, that the owner shall not be entitled to a cash refund when the registration fee for the vehicle to which the plates are to be assigned is less than the registration fee for that vehicle to which the license plates were last assigned. ~~Provided, however, registration plates may not be transferred under this section after December 31 of the year for which issued.~~ An owner assigning or transferring plates to another vehicle as provided herein shall be subject to the same assessments and penalties for use of the plates on another vehicle or for improper use of the plates, as he could have been for the use of the plates on the vehicle to which last assigned. Provided, however, that upon compliance with the requirements of this section, the registration plates of vehicles owned by and registered in the name of a corporation may be transferred and assigned to a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon the showing

that the vehicle to which the transfer and assignment is to be made is owned by a corporation which is a wholly owned subsidiary of the corporation applying for such transfer and assignment."

SECTION 2. G.S. 20-66(g) reads as rewritten:

"(g) When Renewal Sticker Expires. – The registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker ~~expired if the vehicle is not registered under the International Registration Plan. If the vehicle is registered under the International Registration Plan, it is not lawful to operate the vehicle on a highway after the sticker expires.~~ expired.

The Division may vary the expiration dates of registration renewal stickers issued for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division implements registration renewal for a type of vehicle by means of a renewal sticker, it may issue a registration renewal sticker that expires at the end of any monthly ~~interval beginning at nine months and ending at eighteen months.~~interval."

SECTION 3. G.S. 20-66(h) is repealed.

SECTION 4. G.S. 20-79 reads as rewritten:

"**§ 20-79. Dealer license plates.**

(a) How to Get a Dealer Plate. – A dealer licensed under Article 12 of this Chapter may obtain a dealer license plate by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division. The required fee is the amount set by G.S. 20-87(7).

(b) Number of Plates. – A dealer who was licensed under Article 12 of this Chapter for the previous 12-month period ending ~~April 30~~ December 31 may obtain the number of dealer license plates allowed by the following table; the number allowed is based on the number of motor vehicles the dealer sold during the relevant 12-month period and the average number of qualifying sales representatives the dealer employed during that same 12-month period:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	1
At least 12 but less than 25	4
At least 25 but less than 37	5
At least 37 but less than 49	6
49 or more	At least 6, but no more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

A dealer who was not licensed under Article 12 of this Chapter for part or all of the previous 12-month period ending ~~April 30~~ December 31 may obtain the number of dealer license plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application. A "qualifying sales

representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

A dealer who sold fewer than 49 motor vehicles the previous 12-month period ending ~~April 30~~ December 31 but has sold at least that number since ~~May 1~~ January 1 may apply for additional dealer license plates at any time. The maximum number of dealer license plates the dealer may obtain is the number the dealer could have obtained if the dealer had sold at least 49 motor vehicles in the previous 12-month period ending ~~April 30.~~December 31.

A dealer who applies for a dealer license plate must certify to the Division the number of motor vehicles the dealer sold in the relevant period. Making a material misstatement in an application for a dealer license plate is grounds for the denial, suspension, or revocation of a dealer's license under G.S. 20-294.

A dealer engaged in the alteration and sale of specialty vehicles may apply for up to two dealer plates in addition to the number of dealer plates that the dealer would otherwise be entitled to under this section.

(c) Form and Duration. – A dealer license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. In addition, a dealer license plate must have a distinguishing symbol identifying the plate as a dealer license plate.

A dealer license plate is issued for a ~~fiscal year beginning July 1 and ending June 30.~~ period of one year. ~~During the fiscal year for which it is issued, a dealer may transfer a dealer license plate from one vehicle to another.~~ The Division shall vary the expiration dates of dealer registration renewals so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. A dealer may transfer a dealer license plate from one vehicle to another. When the Division issues a dealer plate, it may issue a registration that expires at the end of any monthly interval. When one of the following occurs, a dealer must surrender to the Division all dealer license plates issued to the dealer:

(1) The dealer surrenders the license issued to the dealer under Article 12 of this Chapter.
(2) The Division suspends or revokes the license issued to the dealer under Article 12 of this Chapter.
(3) The Division rescinds the dealer license plates because of a violation of the restrictions on the use of a dealer license plate.

To obtain a dealer license plate after it has been surrendered, the dealer must file a new application for a dealer license plate and pay the required fee for the plate.

(d) Restrictions on Use. – A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.
(2) Is not consigned to the dealer.
(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
(4) Is not used by the dealer in another business in which the dealer is engaged.

(5) Is driven on a highway by a person who carries a copy of the registration card for the dealer plates issued to the dealer while driving the motor vehicle and who meets one of the following descriptions:

a. Has a demonstration permit to test-drive the motor vehicle and carries the demonstration permit while driving the motor vehicle.

b. Is an officer or sales representative of the dealer and is driving the vehicle for a business purpose of the dealer.

c. Is an employee of the dealer and is driving the vehicle in the course of employment.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

(e) Sanctions. – The following sanctions apply when a motor vehicle displaying a dealer license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).

(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).

(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(f) Transfer of Dealer Registration. – No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used."

SECTION 5. G.S. 20-87 reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

These fees shall be paid to the Division ~~annually, as of the first day of January,~~ annually for the registration and licensing of passenger vehicles, ~~fees~~ according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15

passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers.. $20.00
Private passenger vehicles over fifteen passengers 23.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be nine dollars ($9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be sixteen dollars ($16.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is

one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be seven dollars ($7.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private passengers vehicles of not more than 15 passengers."

SECTION 6. G.S. 20-88(b)(6) reads as rewritten:

"(6) There shall be paid to the Division annually ~~as of the first of January,~~ the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated ~~quarterly.~~ monthly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer."

SECTION 7. G.S. 20-88(c) reads as rewritten:

"(c) The fee for a semitrailer or trailer is ten dollars ($10.00) for each year or part of a year. The fee is payable ~~on or before January 1 of~~ each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars ($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer."

SECTION 8. G.S. 20-94 reads as rewritten:

"**§ 20-94. Partial payments.**

In the purchase of licenses, where the gross amount of the license fee to any one owner amounts to more than four hundred dollars ($400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until ~~June 1~~ six months from the month of renewal in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one half of such fee, plus a carrying charge of three percent (3%) of the deferred portion of the license fee: Provided, that any person using any tag so purchased after the first day of ~~June~~ six months from the month of renewal in any such year without having first provided for the payment of such draft, shall be guilty of a Class 2 misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in G.S. 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Division until the draft has been paid. Any one owner whose gross license fee amounts to more than two hundred dollars ($200.00) but not more than four hundred dollars ($400.00) may also be permitted to sign a draft in accordance with the foregoing provisions of this section provided such owner makes application for the draft ~~on or before February 1~~ during the ~~license renewal period.~~month of renewal."

SECTION 9. G.S. 20-288(c) reads as rewritten:

"(c) All licenses that are granted shall expire one year from the date issued unless ~~sooner~~ revoked or ~~suspended, on June 30 of the year following date of issue.~~suspended."

SECTION 10. This act becomes effective January 1, 2005.

SENATE BILL 1083:
Staggered Issuance - Commercial/Dealer Plates.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Sen. Jenkins
Date:	June 1, 2004	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 1083 would allow for commercial license plates and dealer license plates to be issued on a staggered basis throughout the year and would stagger the terms of motor vehicle dealers' and manufacturers' licenses. The bill also makes conforming changes. The bill is a recommendation of the Joint Legislative Transportation Oversight Committee.***

BILL ANALYSIS: Section 1 of the bill is a conforming change to the statute governing transfer of plates to delete a prohibition on transfer of plates after December 31 of the year of issuance.

Section 2 changes the statutes governing expiration of the registration sticker for a vehicle registered under the International Registration Plan. Under current law, all stickers expire December 31st and are valid through February 15th. This section would make the expiration date the last day of the month of renewal, but remain valid until the 15th of the next month.

Section 3 amends the statute governing renewal of vehicle registrations to repeal a subsection providing for expiration of calendar-year plate expiration at midnight on December 31 of each year. The effect of this amendment is to authorize staggered expiration of commercial plates.

Section 4 provides for staggered issuance of dealer license plates, and makes a conforming change to the law governing the determination of the number of dealer plates issued to dealers.

Section 5 amends the vehicle registration fee statute to delete a reference to payment of registration fees on the first day of January.

Section 6 amends the wrecker fee statute to delete a reference to payment of fees on the first day of January.

Section 7 amends the semitrailer and trailer fee statute to delete a reference to payment of fees on the first day of January.

Section 8 amends the statute authorizing partial and deferred payments for registration fees over $400 to conform to staggered registration.

Section 9 staggers motor vehicle dealer and manufacturers license registration.

EFFECTIVE DATE: The bill becomes effective January 1, 2005.

This summary was substantially contributed to by Giles Perry, Counsel to the Joint Legislative Transportation Oversight Committee.

S1083-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1089*

Short Title:	DOT Authority to Receive Funds from Local Gov.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Judiciary I.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO RECEIVE FUNDS FROM LOCAL GOVERNMENTS TO ADVANCE THE CONSTRUCTION SCHEDULE OF TIP PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18 is amended by adding a new subdivision to read:

"(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purpose of advancing the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within seven years of receipt."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 1089: DOT Authority to Receive Funds From Local Governments.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	June 1, 2004	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

*SUMMARY: **Senate Bill 1089 would allow the Department of Transportation to receive funds from local governments in order to advance the construction schedule of roads included in the Transportation Improvement Program. This bill is a recommendation of the Joint Legislative Transportation Oversight Committee.***

BILL ANALYSIS: Section 1 of the bill amends the powers of the Department of Transportation to authorize the Department to enter into agreements with local governments and non-profit corporations to receive funds for the purpose of advancing construction of a project identified in the Transportation Improvement Program. The proposal also provides that if DOT is required by the agreement with the local government or non-profit corporation to reimburse the funds provided, the reimbursement shall be noted in the TIP, and the reimbursement shall occur within 7 years.

EFFECTIVE DATE: The bill is effective when it becomes law

This summary was substantially contributed to by Giles Perry, Counsel to the Joint Legislative Transportation Oversight Committee.

S1089-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1078*
PROPOSED COMMITTEE SUBSTITUTE S1078-PCS55296-RR-44

Short Title: Vehicle Control Signs and Signals. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VEHICLE CONTROL SIGN AND SIGNAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158(a)(3) reads as rewritten:

"(3) At intersections and other appropriate places, by erecting or installing steady-beam ~~stoplights~~ traffic signals and other traffic control devices, signs, or signals. All steady-beam ~~stoplights~~ traffic signals emitting alternate red and green lights shall be arranged so that the red light in vertical-arranged signal faces shall appear ~~at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.~~above, and in horizontal-arranged signal faces shall appear to the left of all yellow and green lights."

SECTION 2. G.S. 20-158(b)(2) reads as rewritten:

"(2) Vehicles facing a red light controlling traffic ~~passing straight through~~ approaching an intersection ~~from a steady or strobe beam stoplight~~ with a steady-beam traffic signal shall not enter the intersection while the ~~steady or strobe beam stoplight~~ traffic signal is emitting ~~a~~ the red ~~light controlling traffic passing straight through an intersection;~~ light; provided that, except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic ~~passing straight through~~ approaching an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but such vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection. When the ~~stoplight~~ traffic signal is emitting a steady yellow circular light on a traffic signal controlling traffic ~~passing straight through~~approaching an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the

related green light is being terminated or a red light will be immediately forthcoming. When the ~~stoplight~~ traffic signal is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law."

SECTION 3. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration ~~specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes, and shall be in full conformance with the requirements of the Manual on Uniform Traffic Control Devices."

SECTION 4. G.S. 160A-300.3(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes, and shall be in full conformance with the requirements of the Manual on Uniform Traffic Control Devices."

SECTION 5. This act becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1078*
PROPOSED COMMITTEE SUBSTITUTE S1078-CSRR-44 [v.2]

6/2/2004 4:55:24 PM

Short Title: Vehicle Control Signs and Signals. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VEHICLE CONTROL SIGN AND SIGNAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158(a)(3) reads as rewritten:

"(3) At intersections and other appropriate places, by erecting or installing steady-beam ~~stoplights~~ traffic signals and other traffic control devices, signs, or signals. All steady-beam ~~stoplights~~ traffic signals emitting alternate red and green lights shall be arranged so that the red light in vertical-arranged signal faces shall appear ~~at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.~~above, and in horizontal-arranged signal faces shall appear to the left of all yellow and green lights."

SECTION 2. G.S. 20-158(b)(2) reads as rewritten:

"(2) Vehicles facing a red light controlling traffic ~~passing straight through~~ approaching an intersection ~~from a steady or strobe beam stoplight~~ with a steady-beam traffic signal shall not enter the intersection while the ~~steady or strobe beam stoplight~~ traffic signal is emitting ~~a~~ the red ~~light controlling traffic passing straight through an intersection;~~ light; provided that, except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic ~~passing straight through~~ approaching an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but such vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection. When the ~~stoplight~~ traffic signal is emitting a steady yellow circular light on a traffic signal controlling traffic ~~passing straight through~~approaching an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the

related green light is being terminated or a red light will be immediately forthcoming. When the ~~stoplight~~ traffic signal is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law."

SECTION 3. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration ~~specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes, and shall be in full conformance with the requirements of the Manual on Uniform Traffic Control Devices."

SECTION 4. G.S. 160A-300.3(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes, and shall be in full conformance with the requirements of the Manual on Uniform Traffic Control Devices."

SECTION 5. This act becomes effective July 1, 2004.

SENATE BILL 1078:
Vehicle Control Signs and Signals.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	June 1, 2004	**Summary by:**	William R. Gilkeson
Version:	S1078-CSRR-44[v.2]		Committee Co-Counsel

SUMMARY: Senate Bill 1078 would amend the vehicle control sign and signal law to do the following:

- ***Allow horizontal, in addition to the traditional vertical, traffic signals.***
- ***Standardize and clarify language about traffic at intersections.***
- ***In the red light camera laws governing the municipalities of Wake County and the City of Concord, change the source for engineering standards for determining how long a light shall remain yellow.***

The changes were recommended by the Joint Legislative Transportation Oversight Committee. The bill would become effective July 1, 2004.

Section 1 – Horizontal traffic signals. Current law *(G.S. 20-158(a)(3))* says that on "stoplights," the red light shall be on top and the green light at the bottom. The bill changes the wording so that stoplights can be vertical as well as horizontal. If horizontal, the light would have the red on the left. The bill also replaces stoplight with the newer standard term "traffic signal."

Section 2 – Language change about intersections. G.S. 20-158(b)(2) is the statute that requires motorists to stop when the light is red and allows them to go when it is green. This section of the bill attempts to standardize and update the language.

Sections 3 and 4 – Yellow light duration at photographed intersections. These sections amend the red light camera laws in the municipalities of Wake County and in the City of Concord. Both those local laws have provisions that provide a source for the standard for how long a light must remain yellow before turning red at signals where cameras are at work. That source, the Design Manual developed by the Signals and Geometrics Section of NCDOT, is now believed by NCDOT to be an inappropriate source. NCDOT's recommendation is that the source instead be the traffic signal plan of record signed by a licensed NC Professional Engineer. The Department also recommended that the yellow-light duration should fully conform with the requirements of the Manual on Uniform Traffic Control Devices, which G.S. 136-30 (copied below) says should apply to all traffic control devices in the State.

BACKGROUND: The PCS only corrects a punctuation omission in the original bill.

§ 136-30. Uniform signs and other traffic control devices on highways, streets, and public vehicular areas.

(a) State Highway System. – The Department of Transportation may number and mark highways in the State highway system. All traffic signs and other traffic control devices placed on a highway in the State highway system must conform to the Uniform Manual. The Department of Transportation shall have the power to control all signs within the right-of-way of highways in the State highway system. The Department of Transportation may erect signs directing persons to roads and places of importance.

(b) Municipal Street System. – All traffic signs and other traffic control devices placed on a municipal street system street must conform to the appearance criteria of the Uniform Manual. All traffic control devices placed on a highway that is

within the corporate limits of a municipality but is part of the State highway system must be approved by the Department of Transportation.

(c) Public Vehicular Areas. – Except as provided in this subsection, all traffic signs and other traffic control devices placed on a public vehicular area, as defined in G.S. 20-4.01, must conform to the Uniform Manual. The owner of private property that contains a public vehicular area may place on the property a traffic control device, other than a sign designating a parking space for handicapped persons, as defined in G.S. 20-37.5, that differs in material from the uniform device but does not differ in shape, size, color, or any other way from the uniform device. The owner of private property that contains a public vehicular area may place on the property a sign designating a parking space for handicapped persons that differs in material and color from the uniform sign but does not differ in shape, size, or any other way from the uniform device.

(d) Definition. – As used in this section, the term "Uniform Manual" means the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the United States Department of Transportation, and any supplement to that Manual adopted by the North Carolina Department of Transportation.

(e) Exception for Public Airport Traffic Signs. – Publicly owned airports, as defined in Chapter 63 of the General Statutes, shall be exempt from the requirements of subsections (b) and (c) of this section with respect to informational and directional signs, but not with respect to regulatory traffic signs.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1078*

Short Title:	Vehicle Control Signs and Signals.	(Public)
Sponsors:	Senators Jenkins; and Carpenter.	
Referred to:	Judiciary I.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VEHICLE CONTROL SIGN AND SIGNAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158(a)(3) reads as rewritten:

"(3) At intersections and other appropriate places, by erecting or installing steady-beam ~~stoplights~~ traffic signals and other traffic control devices, signs, or signals. All steady-beam ~~stoplights~~ traffic signals emitting alternate red and green lights shall be arranged so that the red light in vertical-arranged signal faces shall appear ~~at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.~~above, and in horizontal-arranged signal faces shall appear to the left of all yellow and green lights."

SECTION 2. G.S. 20-158(b)(2) reads as rewritten:

"(2) Vehicles facing a red light controlling traffic ~~passing straight through~~ approaching an intersection ~~from a steady or strobe beam stoplight~~ traffic signal shall not enter the intersection while the ~~steady or strobe beam stoplight~~ traffic signal is emitting ~~a~~ the red light ~~controlling traffic passing straight through an intersection;~~ provided that, except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic ~~passing straight through~~ approaching an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but such vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection. When the ~~stoplight~~ traffic signal is emitting a steady yellow circular light on a traffic signal controlling traffic ~~passing straight through~~approaching an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming.

When the ~~stoplight~~ traffic signal is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law."

SECTION 3. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration ~~specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes, and shall be in full conformance with the requirements of the Manual on Uniform Traffic Control Devices."

SECTION 4. G.S. 160A-300.3(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a licensed North Carolina Professional Engineer in accordance with Chapter 89C of the General Statutes, and shall be in full conformance with the requirements of the Manual on Uniform Traffic Control Devices."

SECTION 5. This act becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1086*
PROPOSED COMMITTEE SUBSTITUTE S1086-PCS55295-RR-45

Short Title: Public Transit Deceleration Lamps. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE REAR HIGH MOUNTED FLASHING DECELERATION LAMPS ON PUBLIC TRANSIT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-130 is amended by adding a new subsection to read:

"(e) High Mounted Flashing Deceleration Lamps. – Public transit vehicles may be equipped with amber, high mounted, flashing deceleration lamps on the rear of the vehicle."

SECTION 2. This act becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1086*

Short Title:	Public Transit Deceleration Lamps.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Judiciary I.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE REAR HIGH MOUNTED FLASHING DECELERATION LAMPS ON PUBLIC TRANSIT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-130 is amended by adding a new subsection to read:

"(e) High Mounted Flashing Deceleration Lamps – Public transit vehicles may be equipped with high mounted flashing deceleration lamps that are located on the rear of a vehicle, and amber in color."

SECTION 2. This act becomes effective July 1, 2004.

SENATE BILL 1086:
Public Transit Deceleration Lamps.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	June 1, 2004	**Summary by:**	William R. Gilkeson
Version:	S1086-CSRR-45[v.1]		Committee Co-Counsel

SUMMARY: Senate Bill 1086 would allow public transit vehicles to be equipped with high-mounted amber lamps on the rear that would flash to warn that the vehicle is slowing down. The change was recommended by the Joint Legislative Transportation Oversight Committee. Effective July 1, 2004.

CURRENT LAW: Currently the law specifies what kinds of lights may be used on a vehicle, and it does not allow a bus or van to have flashing amber lights to indicate the vehicle is slowing down.

BILL ANALYSIS: The bill allows a public transit vehicle, a bus or a van, to be equipped with flashing lamps that warn those behind it that it is slowing down. The lamps would be required to be mounted high on the rear of the vehicle. They would have to be amber.

BACKGROUND: PCS makes technical edits without changing meaning.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1090*
PROPOSED COMMITTEE SUBSTITUTE S1090-PCS15287-RR-43

Short Title: HOV Lanes - Emergency Vehicles. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM HOV LANE RESTRICTIONS MOVEMENT AROUND EMERGENCY VEHICLES, DISABLED VEHICLES, OR DEBRIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-146.2(a) reads as rewritten:

"(a) HOV Lanes. – The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated openings. Any vehicle may cross into or out of an HOV lane to avoid an emergency vehicle in accordance with G.S. 20-157(f), to avoid a disabled vehicle, or to avoid debris. A motor vehicle shall not travel in a designated HOV lane if the motor vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to motorcycles or vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants. HOV lane restrictions shall not apply to emergency vehicles. As used in this subsection, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency."

SECTION 2. This act becomes effective September 1, 2004, and applies to offenses committed on or after that date.

SENATE BILL 1090:
HOV Lanes - Emergency Vehicles.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Jenkins
Date:	June 1, 2004	**Summary by:**	William R. Gilkeson
Version:	S1090-CSRR-43[v.3]		Committee Co-Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 1090 would allow a driver to go into or out of a High Occupancy Vehicle (HOV) lane on a street or highway, even if they would not otherwise be permitted to do so, to avoid an emergency vehicle, a disabled vehicle, or debris. The change was recommended by the Joint Legislative Transportation Oversight Committee. Effective September 1, 2004.

CURRENT LAW: NC law allows NCDOT to designate High Occupancy Vehicle (HOV) lanes on streets or highways. In those lanes, traffic can be restricted to those vehicles that contain a specified number of persons. The number could be specified on each road by NCDOT or by the city. Vehicles must only enter or exit HOV lanes at designated openings. Emergency vehicles (defined in the HOV lane statute) are exempt from the statute. *G.S. 20-146.2.*

When an emergency vehicle is parked within 12 feet of a roadway and is giving a warning signal, motorists are required to move into another lane to avoid it. *G.S. 20-157(f).* But the HOV-lane statute does not provide an exemption for this required avoidance movement in the case where an HOV is the nearest lane to move into.

BILL ANALYSIS: The bill would allow vehicles to move in or out of an HOV lane wherever they need to in order to comply with 20-157(f) and avoid an emergency vehicle, or to avoid a disabled vehicle or debris.

BACKGROUND: As introduced, the bill would have exempted avoidance of an emergency vehicle from the limits on crossing into and out of an HOV lane at the marked entrances and exits. The PCS adds the general exemptions for avoiding disabled vehicles and debris.

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

• • •

(f) When an authorized emergency vehicle as described in subsection (a) of this section is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed until completely past the authorized emergency vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

Violation of this subsection shall not be negligence per se.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1090*

Short Title:	HOV Lanes - Emergency Vehicles.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Judiciary I.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO EXEMPT MOVEMENT AROUND EMERGENCY VEHICLES FROM HOV LANE RESTRICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-146.2(a) reads as rewritten:

"(a) HOV Lanes. – The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated ~~openings.~~ openings, unless the vehicle moves out of the lane to avoid an emergency vehicle, in accordance with G.S. 20-157(f). A motor vehicle shall not travel in a designated HOV lane if the motor vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to motorcycles or vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants. HOV lane restrictions shall not apply to emergency vehicles. As used in this subsection, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency."

SECTION 2. This act becomes effective September 1, 2004, and applies to offenses committed on or after that date.

#1

VISITOR REGISTRATION SHEET

DATE 6-3-04

J-1 Committee

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
C.E. LOCKLEY	SHP	733-7952
C.Y. CARDEN	SHP	733-7952
ALEXANDRA SKINNER	CCPS	733-2126
R. Paul Wilms	NCMBA	
J Pinsky	AAA Carolinas	878-4006
Charles Dell	NC Trucking Assn	334-0387
Betsy Bailey	NC Public Transp.	362-9271
Jim Blackburn	NC Association of County Commissioners	715-2893
David Baker	NC DOR	733-7711
Jonia Stevens	NCDMV	861-3332
Lois Warren	NC DMV	861-3332
ROBERTO CANALES	NCDOT	715-5662
KEVIN LACY	NCDOT	733-3915
Jill Moore	UNC School of Gov't	
Jeannette Cox	UNC School of Gov't Clerk	

#2

VISITOR REGISTRATION SHEET

DATE 6-3-04

J-1 Committee

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
Anne Knight	UNC School of Govt	
Robyn Rone	UNC SOG Law Clerk	
Dick Carlton	Carlton Attorneys PLLC	
L Beverly	LBA	
Chris Dillon	Pro Tem	
Jack Cozort	Parker Poe	
Andy Romanet	NCLM	
S Coward	NCDOT	
Jeff Covey	FOP	
Kay Hatcher	DMV	
Tony Spence	DMV	
Eddie Caldwell	NC Traffic Assn/NC Law Enforcement Assn	
Rick Zechini	NC Assn Realtors	
Tim Minter	NC Home Builders	

#3.

VISITOR REGISTRATION SHEET

DATE 6-3-04

J-1 Committee

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
~~Frank Traan~~	Gov.'s office	3-6184
Joe McClees	McClees Consult	

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 15, 2004	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 257	Unauthorized Use of CB Equipment.	Representative Baker
HB 817	Gun Sale Legal w/Concealed Handgun Permit.	Representative Hilton Representative Sexton, Sr.

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 15, 2004

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:02 am with eleven members present. He introduced the following Pages; Justin Pace from Broadway, Allie Rosenbaum from Cary, Ellie Gilbert from Raleigh, Ric Jernigan from Southern Shores, Dawson Gage from Wilmington.

HB 257 (Unauthorized Use of CB Equipment) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Rex Baker explained that the bill makes it unlawful to use power amplifiers on Citizens Band radios. See Bill Summary for further information. Senator Ralph Hunt has a question. Staff attorney, Hal Pell answered the question. Senator Ham Horton moved for a Favorable Report. All members voted yes. Motion carried.

HB 817 (Gun Sale Legal w/Concealed Hand Gun Permit) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor's, Representative Mark Hilton and Representative Wayne Sexton explained that the bill would allow a person to purchase a handgun without an additional permit if the person has a valid North Carolina concealed handgun permit. The bill would also authorize the Division of Motor Vehicles to issue a National Rifle Association Special Registration Plate. See Bill Summary for further information. Senator's Ralph Hunt, Cecil Hargett, Ham Horton, Charlie Albertson and Martin Nesbitt had questions. Staff attorney's Hal Pell and Walker Reagan answered the questions. Mr. Bruce Thompson, NC Association for Gun Violence spoke on the bill. Mr. Joe McClees, with McClees Consulting, Inc. spoke on the bill, and explained the background search when a person applies for a concealed gun permit. Senator Martin Nesbitt offered an amendment to the bill on page 1, line 15. See attached copy of amendment. Senator Clodfelter called for a vote on the amendment. All members voted in favor. Motion carried. Senator Hargett moved for a

Favorable Report for the amended Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter stated the bill would be referred to Finance Committee.

Being no further business, the meeting adjourned at 10:46 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

CORRECTED REPORT

Tuesday, June 15, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **817** Gun Sale Legal w/Concealed Handgun Permit.

Draft Number:	PCS 60503
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **257** Unauthorized Use of CB Equipment.

Draft Number:	PCS 60505
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 257

Committee Substitute Favorable 4/24/03
Third Edition Engrossed 4/29/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H257-CSRK-82 [v.2]

6/11/2004 10:11:30 AM

Short Title: Unauthorized Use of CB Equipment. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF CITIZENS BAND RADIO EQUIPMENT NOT AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 15 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-328. Unauthorized use of Citizens Band equipment.**

(a) As used in this section, 'Citizens Band radio equipment' means Citizens Band radio equipment authorized by the Federal Communications Commission.

(b) It shall be unlawful for any person willfully and knowingly to use Citizens Band radio equipment not authorized by the Federal Communications Commission. Unauthorized Citizens Band radio equipment includes the use of power amplifiers or equipment prohibited under applicable federal regulations.

(c) This section does not apply to any licensee that is exempted under the provisions of 47 U.S.C. § 302a(f)(2).

(d) Any person willfully and knowingly violating the provisions of this section shall be guilty of a Class 3 misdemeanor."

SECTION 2. This act becomes effective December 1, 2004, and applies to offenses committed on or after that date.

HOUSE BILL 257:
Unauthorized Use of CB Equipment.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	June 15, 2004	**Summary by:**	Hal Pell
Version:	PCS		Committee Co-Counsel

SUMMARY: ***HB 257 makes it unlawful to use power amplifiers on Citizens Band radios.***

CURRENT LAW: Federal law prohibits the use of equipment on Citizens Band radios to amplify the transmission signal beyond what is authorized. The prohibition is enforced by the FCC. Federal law provides that a State or local government may enact a statute or ordinance that prohibits the use of equipment that is not authorized by the FCC.

BILL ANALYSIS: HB 257 makes it a Class 3 misdemeanor to operate a Citizens Band radio using a transmission signal amplifier. A Class 3 misdemeanor is punishable by a maximum fine of $200. If there are no prior convictions, the person may also be sentenced to 1-10 days of community punishment. Prior convictions increase the punishment.

The act is effective December 1, 2004, and applies to acts committed on or after that date

BACKGROUND: Amplified CB transmission signals can cause interference with TV and radio reception.

H257-smrk-01

Summary Contribution by Steve Rose, Staff Attorney

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 257

Short Title:	Unauthorized Use of CB Equipment.	(Public)
Sponsors:	Representative Baker.	
Referred to:	Public Utilities.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF CB RADIO EQUIPMENT IN A MANNER NOT AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 15 of Chapter 62 is amended by adding a new section to read:

"**§ 62-322.1. Unauthorized use of CB equipment.**

(a) As used in this section, "Citizens Band ('CB') radio equipment" has the same meaning as in 47 C.F.R. § 95.411.

(b) It shall be unlawful for any person to use CB radio equipment in a manner not authorized by the Federal Communications Commission. Unauthorized CB radio equipment shall include the use of power amplifiers or equipment that has not obtained the appropriate Federal Communications Commission certification pursuant to Section 302 of the Communications Act of 1934.

(c) Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor."

SECTION 2. This act is effective when it becomes law, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 817
PROPOSED SENATE COMMITTEE SUBSTITUTE H817-PCS60503-RBf-43

Short Title: Gun Sale Legal w/Concealed Handgun Permit. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PISTOL MAY BE PURCHASED BY A PERSON WHO HAS A CONCEALED HANDGUN PERMIT WITHOUT OBTAINING AN ADDITIONAL PERMIT TO PURCHASE A HANDGUN AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A NATIONAL RIFLE ASSOCIATION SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-402 reads as rewritten:

"**§ 14-402. Sale of certain weapons without permit forbidden.**

(a) It ~~shall be~~ is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol or crossbow ~~unless a~~ unless: (i) a license or permit ~~therefor has~~ is first ~~been~~ obtained under this Article by the purchaser or receiver from the sheriff of the county in which ~~that~~ the purchaser or receiver ~~resides.~~resides; or (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the purchase.

It ~~shall be~~ is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol or crossbow without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 2 misdemeanor.

(b) This section does not apply to an antique firearm or an historic edged weapon.

(c) The following definitions apply in this section:

(1) Antique firearm. – Defined in G.S. 14-409.11.

(2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This devise [device] is mechanically held at full or partial draw and released by a trigger or similar mechanism which is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

(4) Historic edged weapon. – Defined in G.S. 14-409.12."

SECTION 2. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

~~(28)~~(27i) National Guard Member. – Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(28) National Rifle Association. – Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or insignia representing the National Rifle Association of America. The Division shall not use the name and logo of the National Rifle Association of America on the plate unless the National Rifle Association of America licenses, without charge, the State to use the name and logo on the plate. The Division must receive 300 or more applications for the plate before it may be developed."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 817:
Gun Sale Legal w/Concealed Handgun Permit

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	June 15, 2004	**Summary by:**	Hal Pell
Version:	H817-CSRBf-43 [v.3]		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute to House Bill 817 would allow a person to purchase a handgun without an additional permit if the person has a valid North Carolina concealed handgun permit. The bill would also authorize the Division of Motor Vehicles to issue a National Rife Association Special Registration Plate. The act is effective when it becomes law.***

I. Purchase with Concealed Handgun Permit

A. Purchasing a Handgun by Permit under Current Law:

G.S. 14-402 makes it unlawful for any person, firm, or corporation in North Carolina to sell, give away, transfer, purchase or receive a handgun if the purchaser or receiver has not first obtained a permit from the sheriff of the county in which the purchaser or receiver resides. G.S. 14-404 sets forth the requirements for the issuance of a permit to purchase a pistol.

The sheriff must certify on the permit that the sheriff has conducted a criminal background check of the applicant and has received no information to indicate that it would be a violation of federal or State law for the applicant to purchase or possess a handgun, and that the sheriff is satisfied as to the applicant's good moral character.

A permit is required for each handgun purchase, and the sheriff is required to keep records of all permits issued, including the name, date, place of residence, age, and former place of residence of each person, firm, or corporation to whom a permit is issued. Counties currently issue permits to purchase more than one pistol on a single application. Permits are valid for 5 years from the date of issuance.

B. Concealed Handgun Permit:

G.S. 14-415.12 sets the criteria for the issuance of a concealed handgun permit. A person who meets the requirements for obtaining a concealed handgun permit would satisfy the requirements for receiving a permit to purchase a pistol. There is a central registry of persons who have been issued concealed handgun permits, and it is maintained by the Division of Criminal Information branch of the SBI. The information may be accessed by the holder's driver's license information. Concealed handgun permits are valid for 5 years from the date of issuance.

BACKGROUND:

Under federal law, a person may currently purchase a longgun with either a handgun purchase permit or a concealed carry permit without a background check.

BILL ANALYSIS:

House Bill 817 would amend G.S. 14-402 to allow a person, firm, or corporation to legally purchase a handgun without first obtaining a permit from the sheriff if the purchaser or receiver first obtains a valid

North Carolina concealed handgun permit. There would be no limit to the number of handguns that may be purchased with a concealed handgun permit.

II. Special NRA Plate Provision

This bill would authorize the issuance of a special license plate bearing the name and logo of the National Rifle Association of America (NRA). The plates may be issued if the NRA authorizes the use of the name and logo without charge, and 300 or more applications are received.

Unless otherwise designated by statute, a special plate costs $10 more than the regular motor vehicle registration fee. The funds in the Special Registration Plate Account (after deducting all expenses) are distributed as follows: $525,000 split among 7 State visitor centers; 50% of remaining funds to the NCDOT for highway beautification (non-interstate); 33% to the Dept. of Commerce for the out-of-state promotion of travel and industrial development in this State; and 17% to the Dept. of Health and Human Services to promote travel accessibility for disabled persons in this State.

The bill is effective when it becomes law.

Summary contribution by Wendy Graf Ray, Staff Attorney
H817-smrk-01

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 817 DATE 6-15-04

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE HB17-CSRBf-43

Rep.)
Sen.) NESBITT

1 moves to amend the bill on page 1, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORDS "FIRST OBTAINED" AND

4 SUBSTITUTING THE WORD "HELD".

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

SIGNED Nesbitt

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GRNC

Grass Roots North Carolina / Forum for Firearms Education
Post Office Box 10684, Raleigh, NC 27605, (919) 664-8565, www.grnc.org

Talking points:

HB 817: "Gun Sale Legal w/Concealed Handgun Permit"

Background: Per Article 52A, G.S. 14-402, persons who purchase handguns must first obtain a pistol purchase permit from the sheriff of the county in which they reside. After a criminal background check compliant with the Brady Law, the sheriff issues a paper permit which the buyer submits to the seller when buying a handgun. HB 842 would only eliminate redundant criminal background checks for concealed handgun permit holders who have already undergone more stringent SBI and FBI background checks under Article 54B ("Concealed Handgun Permit") of the North Carolina General Statutes.

- **Criminal background checks will still be performed.** Holders of concealed handgun permits issued under Section 54B of the General Statutes have already undergone criminal background checks more extensive than those required for pistol purchase permits. Unlike purchase permits, North Carolina concealed handgun permits require SBI and FBI background checks, including fingerprints and demonstration of a history free of substance abuse and mental instability.

- **NC concealed handgun permits may already be substituted for checks via the National Instant Check System mandated by the 1993 Brady Law.** If the federal government is satisfied with the stringency of concealed handgun background checks, why isn't North Carolina?

- **Paperwork and costs will be reduced.** Reducing the number of pistol purchase permits issued, while still requiring criminal background checks via the CHP system will reduce costs to sheriff's departments and purchasers alike. More law enforcement officers can be used for law enforcement rather than processing applications.

- **Revenue for sheriff's departments should remain unchanged, or even increase.** While the number of NC pistol purchase permits issued might decline, it should be offset by a corresponding increase in applications for concealed handgun permits. While a sheriff charges only $5.00 for a pistol purchase permit, G.S. 14-415.19(a) stipulates that the sheriff retain $35 for each concealed handgun permit processed. Additionally, under G.S. 14-415.19(b) the sheriff retains an additional $10 from each concealed handgun permit to cover the costs of fingerprinting.

- **Compliance with statutes will be increased.** Because citizens need not have applied for purchase permits weeks in advance, concealed handgun permit holders have little motivation to purchase handguns without having the requisite criminal background check.

- **Increased motivation for citizens to obtain concealed handgun permits will resulted in increased safety:** More citizens will undergo the "approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force" mandated by G.S. 14-415.12(a)(4).

- **Criminal background checks for handgun purchasers will be done at least as frequently as currently required.** Both purchase permits and concealed handgun permits currently expire after 5 years.

- **Multiple firearm purchases will still be reported.** Despite claims that "gun trafficking" would be facilitated, in reality any multiple handgun purchase requires the submission of Bureau of Alcohol, Tobacco, Firearms and Explosives Form 3310.4, entitled "Report of Multiple Sale or Other Disposition of Pistols and Revolvers." Note that copy 2 of the form is submitted to local law enforcement authorities, which in North Carolina is the sheriff. Translated, **sheriffs are notified of all multiple gun sales.**

OMB No. 1512-0006 (08/31/2003)

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
REPORT OF MULTIPLE SALE OR OTHER DISPOSITION OF PISTOLS AND REVOLVERS

(Please complete all information)

1. FEDERAL FIREARMS LICENSEE (FFL) NUMBER, BUSINESS OR TRADE NAME AND ADDRESS *(include number, street, city, State and ZIP Code) (Recommend use of rubber stamp identifying your FFL name and address as it appears on your Federal Firearms License)*

2. DATE TRANSFERRED

[redacted]

3. HANDGUNS ACQUIRED IN THE LAST FIVE BUSINESS DAYS

TYPE *(Pistol or Revolver)*	SERIAL NUMBER	MANUFACTURER & IMPORTER	MODEL	CALIBER

4. TRANSFEREE'S NAME *(Last, first, middle)*

5. RESIDENCE ADDRESS *(Number, street, city, county, State, ZIP Code)*

6. SEX

7. RACE

8. IDENTIFICATION NUMBER

9. TYPE OF IDENTIFICATION	10. ID STATE	11. DATE OF BIRTH	12. PLACE OF BIRTH *(City, county, state, country)*

WHEN FAX IS AVAILABLE, PLEASE FAX TO 1-877-283-0288 OTHERWISE MAIL TO THE ADDRESS PRE-PRINTED ON REVERSE.

INSTRUCTIONS

1. This form is to be used by licensees to report all transactions in which an unlicensed person has acquired two or more pistols and/or revolvers at one time or during five consecutive business days.

2. A separate form is to be submitted for each unlicensed person.

3. Complete items 1 - 12.

4. **The report is to be submitted to:**

   a. Copy 1 - The National Tracing Center no later than the close of business on the day that the multiple sale or other disposition occurs. FAX this form to 1-877-283-0288 or see the reverse side of this form for the address of the National Tracing Center.

   b. Copy 2 - The official designated by the State or local authorities to receive the form, or in the absence of such designation, to the department of State police or State law enforcement agency in the jurisdiction where the handgun transfer occurred.

   c. Copy 3 - Retain for your official records.

Immediately Faxed to Sheriff

Sheriff

5. Additional forms may be obtained through the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150, (703) 455-7801.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 817

Short Title:	Gun Sale Legal w/Concealed Handgun Permit.	(Public)
Sponsors:	Representatives Hilton, Sexton (Primary Sponsors); Barnhart, Blackwood, Bowie, Capps, Crawford, Creech, Culp, Daughtry, Decker, Eddins, Ellis, Fox, Frye, Gibson, Gillespie, Gorman, Gulley, Holliman, Holmes, Justus, Lewis, McGee, McHenry, McMahan, Mitchell, Nye, Pate, Ray, Rayfield, Sauls, Setzer, Starnes, Stiller, Walker, West, K. Williams, C. Wilson, G. Wilson, Wood, and Yongue.	
Referred to:	Judiciary III.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PISTOL MAY BE PURCHASED BY A PERSON WHO HAS A CONCEALED HANDGUN PERMIT WITHOUT OBTAINING AN ADDITIONAL PERMIT TO PURCHASE A HANDGUN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-402 reads as rewritten:

"**§ 14-402. Sale of certain weapons without permit forbidden.**

(a) It ~~shall be~~ is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol or crossbow ~~unless a~~ unless: (i) a license or permit ~~therefor has~~ is first ~~been~~ obtained under this Article by the purchaser or receiver from the sheriff of the county in which ~~that~~ the purchaser or receiver ~~resides.~~ resides; or (ii) a valid North Carolina concealed handgun permit is first obtained under Article 54B of the General Statutes by the purchaser or receiver who must be a resident of the State at the time of the purchase.

It ~~shall be~~ is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol or crossbow without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 2 misdemeanor.

(b) This section does not apply to an antique firearm or an historic edged weapon.

(c) The following definitions apply in this section:

(1) Antique firearm. – Defined in G.S. 14-409.11.

(2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This devise [device] is mechanically held at full or partial draw and released by a trigger or similar mechanism which is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

(4) Historic edged weapon. – Defined in G.S. 14-409.12."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

6-15-04 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McClees Consulting Inc
Dillie Boon	Research - NCBH
Erica Peters	NC Agribusiness Council
Erin Culbreth	UNC
Doug Lassiter	NCSTA
Don Beason	Capitol Group
Brian Lewis	Planned Parenthood — Charlotte
Colleen Kochanek	Hafer Caldwell, PA
Christopher Rhoades	NCGA Intern - Sen. Lucas
Jeremy Smith	NCGA Intern - Sen. Albertson

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

6-15-04 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry M Lancaster III	LCA
Scott Bayle	Parker Poe
Jason Conley	"
Tracy Kimbrell	Parker Poe.
Bruce Thompson	Parker Poe
Charles K. Stroud	GRNC
Jeff Rau	GRNC
John Phelps	NCLM
Mark Beason	Capitol Group
Tom Beason	NC Environmental Defense
Tom Coley	CWA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 29, 2004	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1119	Election Law Changes - 1.	Representative Alexander
HB 969	Constit. Amend./Magistrates' Terms.	Representative Warner
HB 1046	Aggressive Driving.	Representative Hackney
HB 1449	APA Technical/Clarifying Changes.	Representative Fisher
SB 1317	Bd. of Law Examiners/Fees/Atty. Solicitation.	Senator Rand
HB 1139	Judicial Approval For Pleas In Certain Cases.	Representative Ellis

Senator Daniel G. Clodfelter, Chair

JUDICIARY 1 COMMITTEE

JUNE 29, 2004

MINUTES

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 am with eleven members present. He introduced Pages Vivian Johnson, from Raleigh, Curtina King, and Chris Shaw, from Fayetteville and Bryan Cockfield from Gastonia.

Senator Clodfelter stated that HB-996 and HB 1046 on the agenda would not be heard at this time.

HB-1449 (APA Technical/Clarifying Changes) was introduced by Senator Clodfelter. Bill sponsor, Representative Susan Fisher explained that the bill makes technical changes to conform the formatting of the temporary rule section of the Administrative Procedure Act. It also clarifies that written objections requesting legislative review of a rule must be received no late than the end of the day the Rules Review Commission approves the rule. See Bill Summary for further information. There were no questions. Senator Clark Jenkins offered an amendment to the bill on Page 1, Lines 17 through 19. Senator Bob Carpenter moved for adoption of the amendment. All members voted yes. Amendment was adopted. Senator Phillip Berger offered a second amendment on Page 5, Line 27. Senator Charlie Albertson moved for adoption of the amendment. All members voted yes. Amendment was adopted. Karen Cochran-Brown explained the amendment changes. Mr. Rob Lamme, from NC Department of Health and Human Services to speak on the bill. Mr. Bill Fitzgerald, from NC Department of Facility Services also spoke on the bill. Senator Phillip Berger moved for a Favorable Report as amended. All members voted yes. Motion carried.

HB-1119 (Election Law Changes) Committee Substitute was introduced by Senator Clodfelter. Senator Cecil Hargett moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Bill Gilkeson explained the changes to the bill. See Bill Summary for more information. Senator's Bob Carpenter, Jeanne Lucas, Charlie Albertson, Phillip Berger, Tony Rand, Vernon Malone and Ralph Hunt had questions. Mr. Don Wright, from the NC Board of Elections and Mr. Gilkeson answered the questions. Senator Clodfelter stated that the bill would possible be some

amendments made to the bill, and it would be displaced at this time, and would be on the agenda for the next committee meeting.

SB-1317 (Bd. Of Law Examiners/Fees/Attny.) Committee Substitute was introduced by Senator Clodfelter. Bill Sponsor, Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Rand then explained the bill. Senator's R.C. Soles, Charlie Albertson, Jeanne Lucas and Phillip Berger had questions. Staff Attorney, Bill Gilkeson and Mr. John McMillan from MF&S spoke on the bill and answered the questions. Senator Clark Jenkins moved for a Favorable Report. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be reported out of the J-1 Committee, and referred to the Finance Committee.

Being no further business the meeting adjourned at 10:55 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, June 30, 2004

SENATOR CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1317** Bd. of Law Examiners/Fees/Atty. Solicitation.

Draft Number:	PCS55310
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1449** APA Technical/Clarifying Changes.

Draft Number:	PCS60516
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1449*

Committee Substitute Favorable 6/15/04

PROPOSED SENATE COMMITTEE SUBSTITUTE H1449-PCS60516-RU-61

Short Title: APA Technical/Clarifying Changes. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~ Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Department shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.~~

~~(2) Accept oral and written comments on the proposed temporary rule.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~(a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~(a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in

subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection

must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register."

SECTION 3. G.S. 150B-33(b) is amended by adding the following subdivision to read:

"(12) Accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision."

SECTION 4. Section 3 of this act becomes effective October 1, 2004, and applies to contested cases commenced on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1449*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1449-ARO-58 [v.1]

Date 6-29 ,2004

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Senator JENKINS

moves to amend the bill on page 1, lines 17-19, by rewriting the lines to read:

"(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~ Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1449*

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1449-ARO-59 [v.1]

Date 6-29 ,2004

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Senator BERGER

moves to amend the bill on page 5, line 27, by rewriting the line to read:

"**SECTION 3.** G.S. 150B-33(b) is amended by adding the following subdivision:

'(12) Accept a remanded case from an agency only when a claim for relief has been raised in the petition and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision.'

SECTION 4. Section 3 of this act becomes effective October 1, 2004, and applies to contested cases commenced on or after that date. The remainder of this act becomes effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 1449:
APA Technical/Clarifying Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Susan Fisher
Date:	June 29, 2005	**Summary by:**	O. Walker Reagan
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1449 makes technical changes to conform the formatting of the temporary rule section of the Administrative Procedure Act (APA). It also clarifies that written objections requesting legislative review of a rule must be received no later than the end of the day the Rules Review Commission approves the rule. The Joint Legislative Administrative Procedure Oversight Committee recommended this bill.***

BILL ANALYSIS:

In 2003, the General Assembly enacted House Bill 1151 which made major changes to the rule-making provisions of the APA. House Bill 1151 substantially rewrote G.S. 150B-21.1 which sets forth the procedure for adopting a temporary rule. After the enactment of House Bill 1151, another bill amended the temporary rulemaking section without conforming to the changes made by House Bill 1151. As a result, the numbering of the section is now inconsistent.

House Bill 1449 makes technical amendments to the temporary rule section to conform the subsection numbering. The bill also restores language that previously existed in the APA that was inadvertently deleted by last year's bill.

In addition, the bill clarifies that written objections requesting legislative review of a rule must be received no later than 5:00 p.m. on the day following the date the Rules Review Commission approves the rule.

This bill would become effective when it becomes law.

This summary was substantially contributed to by Karen Cochrane-Brown, Counsel to the Administrative Procedures Oversight Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1449*

Short Title:	APA Technical/Clarifying Changes.	(Public)
Sponsors:	Representative Fisher.	
Referred to:	Judiciary I.	

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for the rule to implement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been

officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Department shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.~~

~~(2) Accept oral and written comments on the proposed temporary rule.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~ (a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~ (a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least

three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, on or before the date it reviews the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1317
PROPOSED COMMITTEE SUBSTITUTE S1317-CSRRf-47 [v.9]

6/28/2004 10:11:25 PM

Short Title: Bd. of Law Examiners/Fees/Atty. Solicitation. (Public)

Sponsors:

Referred to:

May 25, 2004

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PRIVILEGE TAX ON ATTORNEYS TO SUPPORT THE NORTH CAROLINA PUBLIC CAMPAIGN FINANCING FUND; TO DELAY THE EFFECTIVE DATE OF THE IMPOSITION OF A FEE PAYABLE TO THE STATE BUREAU OF INVESTIGATION BY THE NORTH CAROLINA BOARD OF LAW EXAMINERS FOR CRIMINAL HISTORY RECORDS CHECKS, TO AUTHORIZE THE BOARD OF LAW EXAMINERS TO COLLECT FEES ASSOCIATED WITH CRIMINAL HISTORY RECORDS CHECKS, AND TO STRENGTHEN THE RULES REGARDING WHEN AND UNDER WHAT CIRCUMSTANCES A LAWYER MAY SOLICIT BUSINESS FROM A PROSPECTIVE CLIENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-41 reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

~~(1) An attorney at law. In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars ($50.00) to support the North Carolina Public Campaign Financing Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.~~

(2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

(3) A professional engineer, as defined in G.S. 89C-3.
(4) A registered land surveyor, as defined in G.S. 89C-3.
(5) An architect.
(6) A landscape architect.
(7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.
(8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.
(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker or a real estate salesman is required to obtain only one license under this section to cover both activities.
(10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.
(11) A mortician or embalmer licensed under G.S. 90-210.25.

(a1) Every individual in this State who practices law must obtain from the Secretary a statewide license for the privilege of practicing law. A license required by this section is not transferable to another person. The tax for each license is one hundred dollars ($100.00). Fifty percent (50%) of the amount collected under this subsection must be transferred to the North Carolina Public Campaign Financing Fund established under G.S. 163-273.63.

(b) The following persons are exempt from the tax:
(1) A person who is at least 75 years old.
(2) A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.
(3) A blind person engaging in a trade or profession as a sole proprietor. A "blind person" means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

(d) Repealed by Session Laws 1998-95, s. 7, effective July 1, 1999.

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or corporation. A licensed photographer having a located place of business in this State is liable for a license tax on each agent or solicitor employed by the photographer for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, the person is liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

(g) Repealed by Session Laws 1998-95, s. 7, effective July 1, 1999.

(h) Counties and cities may not levy any license tax on the business or professions taxed under this section.

(i) Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required."

SECTION 1.(b) G.S. 163-278.63(b) reads as rewritten:

"(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign Financing Fund by individual taxpayers pursuant to G.S. 105-159.2.

(3) ~~Any contributions made~~Fifty percent (50%) of the privilege tax paid by attorneys in accordance with G.S. ~~105-41.~~105-41(a1).

(4) Public Campaign Financing Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign Financing Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign Financing Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund."

SECTION 1.(c) This section becomes effective July 1, 2004, and applies to taxes due on or after that date.

SECTION 2.(a) Section 29A.12(b) of S.L. 2002-126 reads as rewritten:

"**SECTION 29A.12.(b)** This section becomes effective ~~October 1, 2002.~~ July 1, 2004."

SECTION 2.(b) G.S. 84-24 reads as rewritten:

"**§ 84-24. Admission to practice.**

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the Council, who need not be members of the Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years.

The Board of Law Examiners shall elect a member of the Board as chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable the Board to perform its duties promptly and properly. The chair and any employees shall serve for a period of time determined by the Board.

The examination shall be held in the manner and at the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Department of Justice may provide a criminal record check to the Board of Law Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

~~The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this section.~~ The Board of Law Examiners shall collect any fees required by the Department of Justice for expenses associated with conducting history record checks of applicants for attorney licenses and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

The Board of Law Examiners, subject to the approval of the Council, shall by majority vote, from time to time, make, alter, and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.

All rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the Council.

Whenever the Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to the person, noting thereon that the license is issued in compliance with an order of the Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

SECTION 2.(c) This section is effective when this act becomes law.

SECTION 3.(a) Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-23.2. Attorney solicitations.**

(a) In addition to any rules of professional ethics or conduct adopted by the Council under G.S. 84-23, a lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, or any lawyer affiliated with that lawyer or that lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment for representation in a civil action for wrongful death or liability for serious injury within 45 days after an incident giving rise to the death or serious injury that is the subject of the solicitation. For purposes of this section 'serious injury' means injury that is life-threatening.

(b) A lawyer must file quarterly with the Council or the Council's designee all written communications soliciting professional employment from a prospective client. If a written communication identical in content is sent to two or more prospective clients, the lawyer may comply with this requirement by forwarding to the Council a single copy of the communication together with a list of the names and addresses of the persons to whom the written communication was sent and the date the communication was sent.

(c) A lawyer shall retain for two years a copy of all written communications soliciting professional employment from a prospective client.

(d) Pursuant to G.S. 84-28, the Council shall have disciplinary jurisdiction for any violation of this section."

SECTION 3.(b) Article 2 of Chapter 1 of the General Statutes is amended by adding a new section to read:

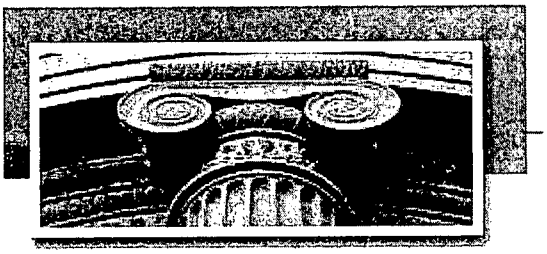
"**§ 1-13.1. Certain settlement agreements without counsel voidable for 120 days after ban on attorney solicitation.**

A person who without representation by an attorney enters into an agreement for final settlement and release of a claim for personal injury or wrongful death may rescind that agreement during or within 120 days after the attorney solicitation ban in G.S. 84-23.2 or after any attorney solicitation ban imposed by the North Carolina State Bar, if the subject of the agreement is the same as the subject of the solicitation ban.

An agreement to settle a claim for property damages only is not voidable under this section."

SECTION 3.(c) This section becomes effective October 1, 2004, and applies to written communications made on or after that date.

SECTION 4. Exception as otherwise provided in this act, this act is effective when it becomes law.



Revised Rules

Back

Select Revised Rule

Information About Legal Services

Rule 7.3 Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "This is an advertisement for legal services" on the outside envelope, if a written communication sent by mail, and at the beginning of the body of the written or electronic communication in print as large or larger than the lawyer's or law firm's name, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan subject to the following:

(1) Definition. A prepaid legal services plan or a group legal services plan ("a plan") is any arrangement by which a person, firm, or corporation, not otherwise authorized to engage in the practice of law, in exchange for any

valuable consideration, offers to provide or arranges the provision of legal services that are paid for in advance of the need for the service ("covered services"). In addition to covered services, a plan may provide specified legal services at fees that are less than what a non-member of the plan would normally pay. The legal services offered by a plan must be provided by a licensed lawyer who is not an employee, director or owner of the plan. A plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.

(2) Conditions for Participation.

(A) The plan must be operated by an organization that is not owned or directed by the lawyer;

(B) The plan must be registered with the North Carolina State Bar and comply with all applicable rules regarding such plans;

(C)The lawyer must notify the State Bar in writing before participating in a plan and must notify the State Bar no later than 30 days after the lawyer discontinues participation in the plan;

(D) After reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with the Revised Rules of Professional Conduct and other pertinent rules of the State Bar;

(E) All advertisements by the plan representing that it is registered with the State Bar shall also explain that registration does not constitute approval by the State Bar; and

(F) Notwithstanding the prohibitions in paragraph (a), the plan may use in-person or telephone contact to solicit memberships or subscriptions provided:

(i) The solicited person is not known to need legal services in a particular matter covered by the plan; and

(ii) The contact does not involve coercion, duress, or harassment and the communication with the solicited person is not false, deceptive or misleading.

Comment

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal

services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress, harassment, compulsion, intimidation, or threats within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] Paragraph (c) of this rule requires that all direct mail solicitations of prospective clients must be mailed in an envelope on which the statement, "This is an advertisement for legal services," appears. Postcards may not be used for direct mail solicitations. The advertising disclosure statement must also appear at the beginning of an enclosed letter or electronic communication in print at least as large as the print used for the lawyer's or law firm's name in the letterhead or masthead. The requirement that certain communications be marked, "This is an advertisement for legal services," does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.3(d) as well as Rules 7.1, 7.2 and 7.3(b). *See* 8.4 (a).

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003.

ETHICS OPINION NOTES

CPR 52. It is proper to notify former clients of changes in the law that could affect their wills.

CPR 104. Attorneys may request lenders and title insurance companies to place them on approved lists.

CPR 191. It is improper for an attorney to belong to a "Tip Club" in which members agree to refer business to each other.

CPR 258. In response to a request, an attorney may submit a bid for legal work to the FHA.

CPR 352. It is not improper for an attorney to inform a client with a personal injury claim that the spouse may also have a claim and that the attorney is willing to handle the claim.

RPC 20. An attorney may not use an intermediary to arrange meetings between prospective business clients and the attorney for the purpose of soliciting legal business, nor may an attorney make "cold calls" upon

prospective business clients.

RPC 57. A lawyer may agree to be on a list of attorneys approved to handle all of a lender's title work.

RPC 71. An attorney may not accept legal employment by a prepaid legal service plan owned by the attorney's wife or another member of the attorney's immediate family, if the plan will market its services by in-person solicitation.

RPC 98. The opinion construes the term "professional relationship" and explores the circumstances under which solicitation of persons or organizations with whom a lawyer has had business and professional dealings is permissible. Targeted print advertising is also discussed.

RPC 115. A lawyer may sponsor truthful legal information which is provided by telephone to members of the public.

RPC 146. A law firm may invite existing clients to a social function hosted by the law firm prior to a bid letting for contracts and may host a social function for nonclients who attend the bid letting as long as the law firm does not solicit employment from the nonclients.

RPC 161. The recorded message which is heard when a television viewer dials a telephone number broadcast during a television advertisement for legal services must include the statement "this is an advertisement for legal services" at the beginning and ending of the recorded message.

RPC 200. The lawyers remaining with a firm may contact by phone or in person clients whose legal matters were handled exclusively by a lawyer who has left the firm.

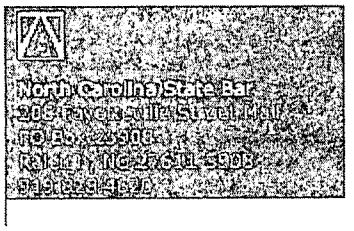
RPC 242. A lawyer may send a letter describing his services to the incorporators of a new business provided the words "This is an advertisement for legal services" are included in the communication.

97 FEO 6. The omission of the lawyer's address from a targeted direct mail letter is a material misrepresentation.

2000 FEO 3. Opinion rules that a lawyer may respond to an inquiry posted on a web page message board provided there are certain disclosures.

CASE NOTES

U.S. Const., Amend. I prohibits states from categorically prohibiting attorneys from soliciting legal business for pecuniary gain by sending truthful letters to potential clients known to face particular legal problems. *Shapero v. Kentucky Bar Ass'n* , 486 U.S. 466, 108 S. Ct. 1916, 100 L. Ed. 2d 475 (1988).



Copyright © 2001-2003 North Carolina State Bar. All rights reserved.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1317

Short Title:	Bd. of Law Examiners/Fees/Atty. Solicitation.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

May 25, 2004

A BILL TO BE ENTITLED

AN ACT TO DELAY THE EFFECTIVE DATE OF THE IMPOSITION OF A FEE PAYABLE TO THE STATE BUREAU OF INVESTIGATION BY THE NORTH CAROLINA BOARD OF LAW EXAMINERS FOR CRIMINAL HISTORY RECORDS CHECKS, TO AUTHORIZE THE BOARD OF LAW EXAMINERS TO COLLECT FEES ASSOCIATED WITH CRIMINAL HISTORY RECORDS CHECKS, AND TO STRENGTHEN THE RULES REGARDING WHEN AND UNDER WHAT CIRCUMSTANCES A LAWYER MAY SOLICIT BUSINESS FROM A PROSPECTIVE CLIENT.

The General Assembly of North Carolina enacts:

SECTION 1. Section 29A.12(b) of S.L. 2002-126 reads as rewritten:

"**SECTION 29A.12.(b)** This section becomes effective ~~October 1, 2002.~~ July 1, 2004."

SECTION 2. G.S. 84-24 reads as rewritten:

"**§ 84-24. Admission to practice.**

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the Council, who need not be members of the Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years.

The Board of Law Examiners shall elect a member of the Board as chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable the Board to perform its duties promptly and properly. The chair and any employees shall serve for a period of time determined by the Board.

The examination shall be held in the manner and at the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to

satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Department of Justice may provide a criminal record check to the Board of Law Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

~~The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this section.~~ The Board of Law Examiners shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

The Board of Law Examiners, subject to the approval of the Council, shall by majority vote, from time to time, make, alter, and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.

All rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the Council.

Whenever the Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to the person, noting thereon that the license is issued in compliance with an order of the Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

SECTION 3. Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-23.2. Attorney solicitations.**

(a) In addition to any rules of professional ethics or conduct adopted by the Council under G.S. 84-23, a lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, or any lawyer affiliated with that lawyer or that lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person receiving the written communication makes it unlikely that the person would exercise reasonable judgment in employing a lawyer. A written communication sent and received within 90 days after an incident giving rise to personal injury or death is presumed to be written at a time or made at a time when the lawyer knows or reasonably should know that the physical, emotional, or mental state of the prospective client makes it unlikely that the person would exercise reasonable judgment when employing a lawyer.

(b) A lawyer must file quarterly with the Council or the Council's designee all written communications soliciting professional employment from a prospective client. If a written communication identical in content is sent to two or more prospective clients, the lawyer may comply with this requirement by forwarding to the Council a single copy of the communication together with a list of the names and addresses of the persons to whom the written communication was sent and the date the communication was sent.

(c) A lawyer shall retain for two years a copy of all written communications soliciting professional employment from a prospective client.

(d) Pursuant to G.S. 84-28, the Council shall have disciplinary jurisdiction for any violation of this section."

SECTION 4. Section 3 of this act becomes effective October 1, 2004, and applies to written communications made on or after that date. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Jt-1 Committee — 6-29-04

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don Wright	NC State Board of Elections
Erica Hilt	Research Branch Cultural Resources
John McMillan	MF+S
Lucius PULLEN	COUNSEL NC MINING ASSOCIATION
Bailey	NC Bar
Tracey Early	News 14 Carolina
Kyle Higgins	NC School Board Assoc.
Rick ZECHINI	NC Association of Realtors
Anne Winner	
Bill Wilson	NCATL
Paul Pulley	Pulley, Watson King & L

VISITOR REGISTRATION SHEET

A-1 Committee — Name of Committee

6-29-04 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Thompson	Dental Examiners
John Phelps	NCLM
Susan Talamo	Waterwurks
R. Carlton Wilms	NCHBA
Bobby Bryan	RRC
Molly Masich	DAIT
JOHN YARBORO	ECNC
T Harris	[illegible]
John Motley	Gov Office
DAVID BARNES	Poyner & Spruill LLP
Marion Smith	BSK

VISITOR REGISTRATION SHEET

A-1 Committee — 6-29-04

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hubert Tyson	NCHA
Bob Sloan	NC Forestry Assoc.
Lu-Ann Cole	NCPA
Tom Coley	CWA
Chavez Walker	Statewatch
Jane Perry	WC HSA
Steve Woodson	NC Farm Bureau
Jeff Hunt	Conf. of DAs
Frank Parrish	Conf. of DAs
Brandy Vickory	Conf. of DAs
Matt Osborne	AOC

VISITOR REGISTRATION SHEET

J-1 — 6-25-04

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Drennan	IOG
Pat Doran	Conference of D.A.s
Marlowe Foster	NCAHP
Greg McLeod	NCAGO
Julie Neuman	Wake Co. Medical Society Alliance
Charlotte Holmes	Wake Co. Medical Alliance
Gary Robertson	AP
Lynn Bonner	NBC
K Ennis	Capitol

Senate Judiciary I Committee
Thursday, July 1, 2004, 10:00 AM
1027 LB

AGENDA

Bills

HB 951	Create Civil No-Contact Protective Orders.	Representative Hackney
HB 1046	Aggressive Driving.	Representative Hackney
HB 1119	Election Law Changes - 1.	Representative Alexander
HB 1139	Judicial Approval For Pleas In Certain Cases.	Representative Ellis
HB 1207	Rules Subj. to Legislative Review/Summaries.	Representative Gibson, III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1139

Committee Substitute Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1139-PCS60518-RU-60

Short Title: Rapist Parental Rights/Open Crim. Discovery. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.2 reads as rewritten:

"**§ 14-27.2. First-degree rape.**

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection, any person who is convicted under this section and comes within the provisions of G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. shall be entitled to petition for adoption of the child under Chapter 48 of the General Statutes."

SECTION 2. G.S. 14-27.3 reads as rewritten:

"**§ 14-27.3. Second-degree rape.**

(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection, any person who is convicted under this section and comes within the provisions of G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. shall be entitled to petition for adoption of the child under Chapter 48 of the General Statutes."

SECTION 3. G.S. 14-27.7A reads as rewritten:

"**§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection, any person who is convicted under this section and comes within the provisions of G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. or is the biological father of the child, shall be entitled to petition for adoption of the child under Chapter 48 of the General Statutes."

SECTION 4. G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

(3) Repealed by Session Laws 1997-215, s. 11(a).

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice.

(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court.

(9) An individual whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the minor to be adopted."

SECTION 5. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 6. G.S. 7B-402 reads as rewritten:

"**§ 7B-402. Petition.**

The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, 14-27.7, or 14-27.7A and the conception of the juvenile need not be named in the petition. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

Sufficient copies of the petition shall be prepared so that copies will be available for each parent if living separate and apart, the guardian, custodian, or caretaker, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party."

SECTION 7. G.S. 7B-406(a) reads as rewritten:

"(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. No summons is required for any person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile. A copy of the petition shall be attached to each summons. Service of the summons shall be completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor."

SECTION 8. G.S. 7B-1103 is amended by adding a new subsection to read:

"(c) No person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile."

SECTION 9. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. Petition or motion.**

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile"; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile need not be named in the petition.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

SECTION 10. G.S. 14-226 reads as rewritten:

"**§ 14-226. Intimidating or interfering with witnesses.**

(a) If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, he shall be guilty of a Class H felony.

(b) A defendant in a criminal proceeding who threatens a witness in the defendant's case with the assertion or denial of parental rights shall be a violation of this section."

SECTION 11. G.S. 15A-902 reads as rewritten:

"**§ 15A-902. Discovery procedure.**

(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to a ~~request,~~ request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.

(c) A motion for discovery under this Article must be heard before a superior court judge.

(d) If a defendant is represented by counsel, ~~he~~ the defendant may as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after either the probable-cause hearing or the date ~~he~~ the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before ~~he~~ the defendant has been afforded or waived a probable-cause hearing, ~~he~~ the defendant may as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after the later of:

(1) The defendant's consent to be tried upon a bill of information, or the service of notice upon ~~him~~ the defendant that a true bill of indictment has been found by the grand jury, or

(2) The appointment of ~~counsel whichever is later.~~ counsel.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for ~~him~~ the defendant prior to or during a probable-cause hearing or prior to execution by ~~him~~ the defendant of a waiver of a probable-cause hearing.

(e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.

(f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part."

SECTION 12. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

~~(a) Statement of Defendant. Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or by the exercise of due diligence may become known to the prosecutor; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement relevant to the subject matter of the case made by the defendant, regardless of to whom the statement was made, within the possession, custody or control of the State, the existence of which is known to the prosecutor or becomes known to him prior to or during the course of trial; except that disclosure of such a statement is not required if it was made to an informant whose identity is a prosecution secret and who will not testify for the prosecution, and if the statement is not exculpatory. If the statement was made to a person other than a law enforcement officer and if the statement is then known to the State, the State must divulge the substance of the statement no later than 12 o'clock noon, on Wednesday prior to the beginning of the week during which the case is calendared for trial. If disclosure of the substance of defendant's oral statement to an informant whose identity is or was a prosecution secret is withheld, the informant must not testify for the prosecution at trial.~~

~~(b) Statement of a Codefendant. Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the State intends to offer in evidence at their joint trial; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement made by a codefendant which the State intends to offer in evidence at their joint trial.~~

~~(c) Defendant's Prior Record. Upon motion of the defendant, the court must order the State to furnish to the defendant a copy of his prior criminal record, if any, as is available to the prosecutor.~~

~~(d) Documents and Tangible Objects. Upon motion of the defendant, the court must order the prosecutor to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, buildings and places, or any other crime scene, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the State and which are material to the preparation of his defense, are intended for use by the State as evidence at the trial, or were obtained from or belong to the defendant.~~

~~(e) Reports of Examinations and Tests. Upon motion of a defendant, the court must order the prosecutor to provide a copy of or to permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecutor. In addition, upon motion of a defendant, the court must order the prosecutor to permit the defendant to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample of it, available to the prosecutor if the State intends to offer the evidence, or tests or experiments made in connection with the evidence, as an exhibit or evidence in the case.~~

~~(f) Statements of State's Witnesses.~~

~~(1) In any criminal prosecution brought by the State, no statement or report in the possession of the State that was made by a State witness or prospective State witness, other than the defendant, shall be the subject of subpoena, discovery, or inspection until that witness has testified on direct examination in the trial of the case.~~

~~(2) After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the State to produce any statement of the witness in the possession of the State that relates to the subject matter as to which the witness has testified. If the entire contents of that statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.~~

~~(3) If the State claims that any statement ordered to be produced under this section contains matter that does not relate to the subject matter of the testimony of the witness, the court shall order the State to deliver that statement for the inspection of the court in camera. Upon delivery the court shall excise the portions of the statement that do not relate to the subject matter of the testimony of the witness. With that material excised, the court shall then direct delivery of the statement to the~~

~~defendant for his use. If, pursuant to this procedure, any portion of the statement is withheld from the defendant and the defendant objects to the withholding, and if the trial results in the conviction of the defendant, the entire text of the statement shall be preserved by the State and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this subsection, the court, upon application of the defendant, may recess proceedings in the trial for a period of time that it determines is reasonably required for the examination of the statement by the defendant and his preparation for its use in the trial.~~

~~(4) If the State elects not to comply with an order of the court under subdivision (2) or (3) to deliver a statement to the defendant, the court shall strike from the record the testimony of the witness, and direct the jury to disregard the testimony, and the trial shall proceed unless the court determines that the interests of justice require that a mistrial be declared.~~

~~(5) The term "statement," as used in subdivision (2), (3), and (4) in relation to any witness called by the State means~~

~~a. A written statement made by the witness and signed or otherwise adopted or approved by him;~~

~~b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital or an oral statement made by the witness and recorded contemporaneously with the making of the oral statements.~~

~~(g) DNA Laboratory Reports. The defendant shall have the right to obtain a copy of DNA laboratory reports provided to the district attorney revealing that there was a DNA match to the defendant that was derived from a CODIS match during a comparison search involving the defendant's DNA sample, in accordance with the procedure set forth in G.S. 15A-902.~~

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section."

SECTION 13. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure ~~of evidence~~ by the State – Certain ~~reports~~ information not subject to disclosure.**

(a) ~~Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not require the production of reports, memoranda, or other internal documents made by the prosecutor, law enforcement officers, or other persons acting on behalf of the State in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses of the State to anyone acting on behalf of the State.~~ The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(b) Nothing in this section prohibits ~~a prosecutor~~the State from making voluntary disclosures in the interest of ~~justice.~~justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or

(2) Grant a continuance or recess, or

(3) Prohibit the party from introducing evidence not disclosed, or

(3a) Declare a mistrial, or

(3b) Dismiss the charge, with or without prejudice, or

(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article."

SECTION 18. G.S. 15A-959 reads as rewritten:

"**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.**

(a) If a defendant intends to raise the defense of insanity, ~~he~~ the defendant must ~~within the time provided for the filing of pretrial motions under G.S. 15A-952~~ file a notice of ~~his~~ the defendant's intention to rely on the defense of ~~insanity.~~ insanity as provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a reasonable time prior to trial. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(b) ~~If~~ In cases not subject to the requirements of G.S. 15A-905(c), if a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether ~~he~~ the defendant had the mental state required for the offense charged, ~~he~~ the defendant must within ~~the time provided for the filing of pretrial motions under G.S. 15A-952(b)~~ a reasonable time prior to trial file a notice of that intention. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial."

SECTION 19. G.S. 15A-501 is amended by adding a new subdivision to read:

"**§ 15A-501. Police processing and duties upon arrest generally.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

...

(6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty."

SECTION 20. Sections 1 through 10 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. Sections 11 through 20 of this act become effective October 1, 2004, and apply to cases set for trial pursuant to G.S. 7A-49.4 on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H 1139 DATE 7-1-04

S. B. No. _____ Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1139-CSRU-60 [v.7]

Rep.) Sen.) Eoles

1 moves to amend the bill on page 5, line 24

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4

5 "voluntarily comply with the provisions

6 of Article 48 of Chapter 15A

7 of the General Statutes. Upon receiving

8 a negative or unsatisfactory response,

9 or upon;".

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1139:
Rapist Parental Rights/Open Criminal Discovery

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	**Rep. Ellis**
Date:	July 1,2004	**Summary by:**	Hal Pell
Version:	H1139-CSRU-60		Committee Co-Counsel

SUMMARY:

The act would amend the laws to terminate parental rights of a rapist where a child is born as the result of the rape. The act also criminalizes the assertion or denial of parental rights, by a defendant in a criminal proceeding, to threaten a witness. The provisions are effective December 1, 2004, and apply to offenses occurring on or after that date.

The act would also rewrite the discovery rules in felony criminal cases, to include the disclosure of the complete investigative file by the State to the defendant; it also would require the defendant to notify the State as to expected defenses. The disclosure provisions are effective October 1, 2004 and apply to cases set for trial pursuant to G.S. 7A-49.4 on or after that date.

I. PARENTAL RIGHTS

In cases where a person has been convicted of first degree rape, second degree rape, or statutory rape, the offender would lose the following rights with regard to any child born as the result of the criminal offense:

1. Any rights to either custody or inheritance from the child, or rights of adoption.
2. The right to consent to an adoption of the child.
3. The right to seek custody (or visitation) of the child.
4. The right to be named in any petition filed for jurisdiction over a juvenile due to neglect or abuse.
5. The right to receive a summons regarding an allegation of abuse and neglect of a juvenile.
6. The right to file a petition to terminate the parental rights of another person with regard to the child.

The bill also amends the criminal statute that makes it illegal to intimidate a witness. The amendment provides that it is a Class H felony if a defendant in a criminal proceeding threatens a witness in the defendant's case with the assertion or denial of parental rights.

The provisions in Sections 1 though 10 become effective December 1, 2004, and apply to offenses committed on or after that date.

II. DISCLOSURE PROVISIONS

BACKGROUND:

The current law on disclosure in criminal cases provides that certain documents or matters be provided to the defendant upon motion of the defendant, including: defendant's statements; the substance of any oral statements; a co-defendant's statement; defendant's prior record; and documents that are material to the preparation of the defense, intended for use by the State as evidence, or were obtained from or belong to the defendant. The State must also provide any reports of examinations or tests, and allow the defendant to inspect and test the evidence if the State intends to offer the evidence (or tests or experiments in connection with the evidence) at trial. There is no requirement to disclose a witness's statement until such time as the witness has testified on direct examination.

Absent motion or request for discovery, the State is required--as a matter of constitutional law--to provide the defendant any evidence that would tend to exculpate the defendant.

BILL ANALYSIS:

Section 11: **[WAIVER OF WRITTEN REQUEST]**

Currently, before filing a motion for discovery before the judge, a party must make a request in writing that the other party comply voluntarily with the discovery request. The statute would allow the parties to waive the written request requirement.

Section 12: **[STATE DISCLOSURE REQUIREMENTS]**

This section of the act deletes the current disclosure provisions and re-writes them. Under the new provisions, the State must disclose:

- The complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" is defined to include: defendant's statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses. The defendant would have the right to inspect, examine, and test any physical evidence or sample.
- Within a reasonable time before trial, the State must give notice of any expert witnesses that it reasonably expects to call at trial. Reports of the results of examinations or tests would be furnished, as well as an expert's curriculum vitae, opinion, and the underlying basis for the opinion.
- Provide the defendant, at the beginning of jury selection, a list of witnesses whom the State reasonably expects to call at trial. The State may certify, in writing, that the disclosure of a witness's name may subject the witness or others to physical or substantial economic harm or coercion, or that there is another compelling reason not to disclose the name. The court retains discretion to allow any undisclosed witness to testify at trial.

Section 13: **[INFORMATION NOT SUBJECT TO DISCLOSURE]**

The State would not be required to disclose written materials prepared by the State for use at trial, or other documents to the extent that they contain opinions, theories, strategies, or conclusions of the prosecutor or the prosecutor's legal staff. The State is not prohibited from voluntary disclosure, and the law has no affect on any federal and State constitutional disclosure requirements.

Section 14: **[DEFENDANT'S DISCLOSURE REQUIREMENTS]**

Current law provides for the inspection of documents and other matters that the defendant intends to introduce into evidence. This section adds the following to the current law: notice to the State of the defenses of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of the defense is inadmissible.

- Alibi witnesses must be disclosed within two weeks of trial. Upon a showing of good cause, the State must disclose any rebuttal witnesses to the alibi defense at least one week before trial. Different time periods for disclosure may be agreed upon by the parties.
- As to the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, the defendant must provide specific information as to the nature and extent of the defense.

Section 15: **[CONTINUING DUTY]**

The law is amended to include "witness" to the current requirement that the parties disclose to the other party any evidence that is subject to disclosure, regardless of when it is obtained.

Section 16: **[PROTECTIVE ORDER]**

The act adds a provision to allow a party to seek, ex parte, a protective order to avoid the disclosure of a matter that is otherwise discloseable. A party will receive notice that the other party has obtained a protective order, but the subject matter of the order will not be disclosed.

Section 17: **[SANCTIONS]**

In determining the propriety of sanctions against a party for failing to comply with the discovery provisons, the judge must consider both the materiality of the subject matter and the totality of the circumstances surrounding the nondisclosure.

Section 18: **[INSANITY DEFENSE]**

The section conforms the insanity defense notification section to the new disclosure provisions. The section requires that notice of expert testimony be given to the State within a reasonable time prior to trial even if the parties are not providing disclosure under the new statutory provisions.

Section 19: **[LAW ENFORCEMENT DISCLOSURE]**

The section requires that upon the arrest of a person, a law enforcement officer must make available to the State all materials and information acquired in the course of all felony investigations. The responsibility is a continuing affirmative duty.

The disclosure provisions are effective October 1, 2004 and apply to cases set for trial pursuant to G.S. 7A-49.4 on or after that date.

H1139pcs-smrk-01

Judiciary 1 Committee

July 1, 2004

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:04 am with eleven members present. He introduced Pages Kalissa Van Vuren, Gabrielle Brown, Donna Bradley and Rheagan Turner.

HB-1139 (Judicial Approval For Pleas In Certain Cases) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative Sam Ellis, Senator Tony Rand explained that the act would amend the laws to terminate parental rights of a rapist where a child is born as the result of the rape. The act also criminalized the assertion or denial of parental rights, by a defendant in a criminal proceeding, to threaten a witness. The act would also rewrite the discovery rules in felony criminal cases, to include the disclosure of the complete investigative file by the State to the defendant; it also would require the defendant to notify the State as to expected defenses. See Bill Summary for further information. Senator's Vernon Malone, Phillip Berger, R.C. Soles, Jeanne Lucas and Cecil Hargett had questions. Mr. Dick Taylor from the Academy of Trial Lawyers spoke on the bill and answered questions. Staff attorney, Walker explained the parental rights issue and answered questions. Senator Soles offered an amendment to the bill on page 5, line 24, and moved for adoption of the amendment. All members voted yes. Motion carried. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-951 (Create Civil No-Contact Protective Orders) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be discussed, but not voted on at this meeting. Bill sponsor, Representative Joe Hackney explained that the bill would allow the courts to issue protective orders, similar domestic violence orders under Chapter 50B, in situations where a person has been a victim of stalking or nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as contempt of court. See Bill Summary for further information. Senator's Cecil Hargett, Tony Rand and Phillip Berger had questions. Ms. Monika Hofstadter from Victims of Sexual Violence Association, and Mr. Eddie Caldwell, NC Sheriff's Association spoke on the bill. Ms. Jo McCants,

AOC spoke briefly on the bill. Senator Cecil Hargett moved for a Favorable Report. Senator Clodfelter stated that he would hold Senator Hargett's motion, and the bill would be displaced, and would be heard at a future date.

HB-1207 (Rules Subj.to Legislative Review/Summaries) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative Pryor Gibson, staff attorney, Walker Reagan explained the bill would permit a bill filed to disapprove an administrative rule to be considered until the adjournment of each annual session notwithstanding a crossover rule, and requires an agency that adopts a rule that is subject to legislative disapproval to prepare a summary of the rule that is given to the General Assembly. See Bill Summary for further information. Senator Tony Rand had a question. Mr. George Givens from the Fiscal Research Department answered the question. Senator Clodfelter stated that the bill would not be voted on at this time, and would be held for a future meeting.

Being no further business the meeting adjourned at 11:00 am.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, July 01, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1139** Judicial Approval For Pleas In Certain Cases.

Draft Number:	PCS 60518
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1139

Committee Substitute Favorable 4/30/03

Short Title: Judicial Approval for Pleas in Certain Cases. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE JUDICIAL APPROVAL FOR PLEA ARRANGEMENTS IN SEX OFFENSE CASES THAT RESULT IN THE VICTIM BECOMING PREGNANT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 57 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1013. Judicial approval required for plea arrangement in certain cases.**

If the offense is a sex offense that resulted in the victim becoming pregnant, the parties shall not include any consideration of parental rights with regard to the adoption, visitation, custody, care, or welfare of the child as part of the negotiations or substance of a plea arrangement without the prior permission of the presiding, or resident, superior court judge. If the judge grants the permission requested, the judge may participate in the discussions. If the State and defendant agree upon a plea arrangement in a case described in this subsection, they must disclose the substance of their plea negotiations and the substance of the plea agreement to the judge before the time the defendant is called upon to plead, unless the judge participated in the discussions and knows the full details of the negotiations and the substance of the plea agreement."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

7-1-04 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Clint Wilson	
Beth Froehling	NCCADV
Michelle Frazier	NC Bar Ass'n
Susan Valauri	Nationwide Ins.
R. Paul Wilms	NCH/BA
Rick Zechini	NC Assn. of REALTORS
Don Wright	NC State Board of Elections
	F.D.A.L.P.A.
John Mattox	Gov office
Monika Johnson Hostler	NCCASA
Joanne Stevens	NCCASA

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

7-1-04 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Stobbin	KCCH
BRUCE THOMPSON	PARKER POE
Tracy Kimbrell	Parker Poe
Gary McNeill	NCDOJ
Sylvia Wooten	NCCBI
PERRI MORGAN	NFIB
Kim Hibbard	NCLM
Sherwood Jones	NCHA
Crissy Potter	Smith Anderson
W. P. Polk	
DAVID BARNES	Poyner & Spruill LLP

VISITOR REGISTRATION SHEET

J-1 Committee — 7-1-04

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Courtesy of Chairman	NC 001
Bobby Bryan	RJRC
John Bowdich	ADA
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Off Assn
Fred Edwards	DMV License & Theft
Joey Gardner	DMV License & Theft
Bob Hall	Democracy North Carolina
~~Mike Osborne~~	~~AOC~~
Jo B McCants	AOC
Mary Katherine Hackney	Intern - Rep Hackney
W P Pulley	NCATL
Bill Wilson	NCATL
JOHN YARBORO	ECNC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 6, 2004	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 951	Create Civil No-Contact Protective Orders.	Representative Hackney
HB 1354	Strengthen Domestic Violence Laws.	Representative McLawhorn Representative Sherrill
SB 1225	2004 Technical Corrections Act.	Senator Hartsell

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 6, 2004

Minutes

Senator Clodfelter, Chair, called the meeting to order at 10:06 a.m. with ten members present.

SB-1225 (2004 Technical Corrections Act) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be displaced, and would be on the agenda for the next meeting.

HB-951 (Create Civil No-Contact Protective Orders) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney Walker Reagan, explained that the bill would allow the courts to issue protective orders, similar to domestic violence orders under Chapter 50B, in situations where a person has been a victim of stalking or nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as contempt of court. See Bill Summary for more information. Senator Clodfelter explained that SB 916 is a companion bill to HB 951. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

HB-1354 (Strengthen Domestic Violence Laws) Committee Substitute was introduced by Senator Clodfelter. Bill sponsor, Representative Marian McLawhorn, explained that the bill strengthens the laws against domestic violence, provides additional assistance to domestic violence victims, and makes other changes as recommended by the House Select Committee on Domestic Violence. Mr. Doug Holbrook from NCGA Fiscal Research Division shared fiscal notes on the bill. Staff attorney's Ms. Susan Sitze and Hal Pell explained the different sections of the bill. See Bill Summary for further information. Senator's Phillip Berger, Jeanne Lucas and Tony Rand had questions. Representative Paul Stam, Mr. Holbrook and Ms. Mildred Spearman from NC Department of Corrections spoke on the bill and answered the questions. Senator Clodfelter stated that the bill would be displaced, but would be heard at the next meeting.

Being no further business the meeting adjourned at 11:00 a.m.

Senator Dan Clodfelter

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 06, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **951** Create Civil No-Contact Protective Orders.

Draft Number:	PCS 30571
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 951

Committee Substitute Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H951-PCS30571-RU-62

Short Title: Create Civil No-Contact Protective Orders. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50C.**

"**Civil No-Contact Orders.**

"**§ 50C-1. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – To physically or mentally harm, harass, intimidate, or interfere with the personal liberty of another.

(2) Civil no-contact order. – An order granted under this Chapter, which includes a remedy authorized by G.S. 50C-5.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – The penetration, however slight, by any object into the genital or anal opening of another person's body. Evidence of emission of semen is not required to prove sexual penetration.

(6) Stalking. – Following on more than one occasion or otherwise harassing, as defined in G.S. 14-277.3(c), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress.

(7) Unlawful conduct. – The commission of one or more of the following acts upon a person, but does not include acts of self-defense or defense of others:

a. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

b. Stalking.

(8) Victim. – A person against whom an act of unlawful conduct has been committed by another person not involved in a personal relationship with the person as defined in G.S. 50B-1(b).

"**§ 50C-2. Commencement of action; filing fees not permitted; assistance.**

(a) An action is commenced under this Chapter by filing a verified complaint for a civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

(1) A person who is a victim of unlawful conduct that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct that occurs in this State.

(b) No court costs shall be assessed for the filing or service of the complaint, or the service of any orders.

(c) An action commenced under this Chapter may be filed in any county permitted under G.S. 1-82 or where the unlawful conduct took place.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-3. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the civil no-contact order, and any temporary civil no-contact order that has been issued and the notice of hearing on the temporary civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-4. Hearsay exception.**

In proceedings for an order or prosecutions for violation of an order under this Chapter, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

"**§ 50C-5. Civil no-contact order; remedy.**

(a) Upon a finding that the victim has suffered unlawful conduct committed by the respondent, the court may issue temporary or permanent civil no-contact orders as authorized in this Chapter. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the victim.

(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent to cease stalking the victim, including at the victim's workplace.

(3) Order the respondent to cease harassment of the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**§ 50C-6. Temporary civil no-contact order; court holidays and evenings.**

(a) A temporary civil no-contact order may be granted ex parte, without evidence of service of process or notice, only if both of the following are shown:

(1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the victim before the respondent can be heard in opposition.

(2) Either one of the following:

a. The complainant certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.

b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

(b) Every temporary civil no-contact order granted without notice shall:

(1) Be endorsed with the date and hour of issuance.

(2) Be filed immediately in the clerk's office and entered of record.

(3) Define the injury, state why it is irreparable and why the order was granted without notice.

(4) Expire by its terms within such time after entry, not to exceed 10 days.

(5) Give notice of the date of hearing on the temporary order as provided in G.S. 50C-8(a).

(c) If the respondent appears in court for a hearing on a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-7 have been met, the court may issue a permanent order.

(d) When the court is not in session, the complainant may file for a temporary order before any judge or magistrate designated to grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of harm to the victim and that the requirements of subsection (a) of this section have been met, the judge or magistrate may issue a temporary civil no-contact order. The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders when the court is not in session.

"**§ 50C-7. Permanent civil no-contact order.**

Upon a finding that the victim has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent.

"**§ 50C-8. Duration; extension of orders.**

(a) A temporary civil no-contact order shall be effective for not more than 10 days as the court fixes, unless within the time so fixed the temporary civil no-contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension shall be stated in the temporary order. In case a temporary civil no-contact order is granted without notice and a motion for a permanent civil no-contact order is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion for a permanent civil no-contact order comes on for

hearing, the complainant may proceed with a motion for a permanent civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two days' notice to the complainant or on such shorter notice to that party as the judge may prescribe, the respondent may appear and move its dissolution or modification. In that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) A permanent civil no-contact order shall be effective for a fixed period of time not to exceed one year.

(c) Any order may be extended one or more times, as required, provided that the requirements of G.S. 50C-6 or G.S. 50C-7, as appropriate, are satisfied. The court may renew an order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 50D-6(c).

(d) Any civil no-contact order expiring on a day the court is not open for business shall expire at the close of the next court business day.

"**§ 50C-9. Notice of orders.**

(a) The clerk of court shall deliver on the same day that a civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) Unless the respondent was present in court when the order was issued, the sheriff shall serve the order on the respondent and file proof of service in the manner provided for service of process in civil proceedings. If the summons has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence. If the victim's residence is not located in a municipality or in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the victim's residence is located.

(d) Any order extending, modifying, or revoking any civil no-contact order shall be promptly delivered to the sheriff by the clerk and served by the sheriff in accordance with the provisions of this section.

"**§ 50C-10. Violation.**

A knowing violation of an order entered pursuant to this Chapter is punishable as contempt of court.

"**§ 50C-11. Remedies not exclusive.**

The remedies provided by this Chapter are not exclusive but are additional to other remedies provided under law."

SECTION 2. This act becomes effective December 1, 2004, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

HOUSE BILL 951:
Create Civil No-Contact Protective Orders.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Hackney
Date:	July 6, 2004	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H951-CSRU-62 [v.11]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 951 would allow the courts to issue protective orders, similar to domestic violence orders under Chapter 50B, in situations where a person has been a victim of stalking or nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as contempt of court.***

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 951 creates a new Chapter 50C entitled "Civil No-Contact Orders". The bill establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where unlawful conduct (as defined in the bill) has occurred.

G.S. 50C-1 sets out definitions used in the Chapter. This includes the definition of "unlawful conduct" to include nonconsensual sexual conduct (defined) and stalking (defined). "Stalking" is defined the same as the crime of stalking but could be proven by the greater weight of the evidence. "Nonconsensual sexual conduct" includes sexual fondling or sexual penetration where consent is not freely given. "Victim" is defined as a person against whom unlawful conduct is committed other than in a situation where an action could be brought under Chapter 50B.

G.S. 50C-2 permits a verified complaint for a civil no-contact order to be filed by a victim of unlawful conduct or a person who acts behalf of another incompetent person who is such a victim. No filing fees or sheriff services fees are to be charged for person filing this type of action. Actions may be brought where either the complainant or the respondent resides or where the unlawful conduct occurred.

G.S. 50C-3 sets out the service of process that applies in these proceedings. Service is to be by personal service by the sheriff or by publication if the sheriff cannot serve the respondent. The respondent is directed to answer the complaint within 10 days of service. If the respondent fails to answer or fails to appear, the court can enter orders by default.

G.S. 50C-4 restricts the admissibility of the victim's prior sexual activities to the same standards as permitted in criminal cases. Testimony of the victim's past sexual conduct must first be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-5 permits the court to issue a no-contact order where it is found that the complainant is a victim of unlawful conduct. The order may require the respondent to not visit, assault, molest or otherwise interfere with the victim, order the respondent to cease stalking, harassing, abusing, injuring, or contacting the victim by telephone, written communication or electronic means. The court may also order

the respondent to stay away from the victim including prohibitions against entering the victim's residence, school, place of employment or other specified places at times when the complainant is present.

G.S. 50C-6 sets out a procedure for the issuance of temporary no-contact orders, including in emergency situation prior to service of process on the respondent.

G.S. 50C-7 sets out a procedure for the issuance of permanent no-contact orders.

G.S. 50C-8 limits temporary orders to a maximum of 10 days. Permanent orders may last for a period of up to one year. Temporary and permanent orders may be renewed one or more times.

G.S. 50C-9 sets out a process of delivering notices of the orders with the sheriff and service of orders on the respondent.

G.S. 50C-10 makes a violation of a no-contact order punishable by contempt of court.

G.S. 50C-11 makes it clear that remedies under this law are not exclusive.

EFFECTIVE DATE: The bill would become effective December 1, 2004 and would apply to actions that give rise to civil no-contract orders issued under the act, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 951

Short Title:	Student Advisor to Local Board of Education.	(Public)
Sponsors:	Senators Lucas; Dannelly, Holloman, Moore, and Queen.	
Referred to:	Education/Higher Education.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A STUDENT ADVISOR TO EACH LOCAL BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-35 is amended by adding a new subsection to read:

"(c) In addition to the membership of each local board of education provided for by this section or local legislation, each local board of education shall appoint a student enrolled in the local school administrative unit to serve as an advisor to the board. The student advisors shall participate in board deliberations in an advisory capacity only. The board may, in its discretion, exclude the student advisor from executive sessions."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Comm. — 7-6-04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ray Hall	General Statute Commission
Michelle Frazier	NC Bar Ass'n
Mildred Spearman	NCDOC
Susan Valaam	NW
Amy Jo Herne	NCMS
Chris Fitzsimon	NC Policy Watch
George Reed	NC Council of Churches
Susan Borgesi	FVRC
Brad Johnson	Chatham County Sheriff's Office
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
John Guard	Pitt County Sheriff's Office

VISITOR REGISTRATION SHEET

J-1 Comm. — Name of Committee

7-6-04 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barry Bryant	Governor's Crime Commission
[illegible]	Poyner & Spruill
Paul Pulley	Pulley, Watson
Hal Miller	NCACCT
John Goodman	Alley Associates
Suzanne Chester	LANC
TeAndra M. Miller	LANC
Rich Webb	NCGA Intern
John Madler	NC Sentencing Commission
Tamara Flinchum	NC Sentencing Commission
Nathaniel Kelley	NC Sentencing Commission
Bob Fitzgerald	DHHS/DFS
Diane Castellow	Wake Co. Human Services/ERC

Name	Firm or Agency
J. Bussian	NC Press Assn.
B. Uebrick	Senator Berger's Office
Gary Salamido	6&K
Christopher Rhoads	Intern
C. Jackson, RN	NCNA
Will Polk	NC DOJ
Kevin Howell	Gov's office
Geoff Millsaps	DOT
Bob Lumley	HHS

VISITOR REGISTRATION SHEET

J-1 Comm. — 7-6-04

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roz Savitt	NCCAA
Kit Gruelle	Family Violence & Rape Crisis Cal. POST
Beth Froehling	NCCADV
Mary Beth Loucks Sorrell	NCCADV
Monika Johnson Hostler	NCCASA
Joanne Stevens	NCCASA
Myra Gaddy	NCCADV/NCCASA
JOHN YARBORO	ECNC
SAM JOHNSON	ATTY NCAI
Bruce Clarke	ECNC/NCAI
Tommy Harrelson	Lobbyist
BILL [illegible]GIN	KCLH

Name	Firm or Agency
Kristine Swagert	221 Salinger St, Knightdale NC 27545 Victim 919-217-1685
Tina Brown	~~Eden~~ NCCADV
Jennifer Tolle Whiteside	NC CFTF
Tina Rivera	victim
Andrea Kurtz	Legal Aid Society of NW NC
R. Paul Wilms	NCHBA
Chad Essick	Edmisten + Webb
Agnora Skinner	NCLCPS
Stephanie Hudson	
John Nothnagel	Governor's
Jon Delk	Gov office
Jo McCants	AOC
Terry Stanback	NCPCJ Foundation
Jon Carr	Jordan Price

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 8, 2004	8:30 AM to 10:30 AM	1027 LB

NOTE: TIME CHANGE

The following will be considered: As listed on the agenda.

BILL NO.	SHORT TITLE	SPONSOR
HB 1449	APA Technical/Clarifying Changes.	Representative Fisher
HB 1354	Strengthen Domestic Violence Laws.	Representative McLawhorn Representative Sherrill
HB 1119	Election Law Changes - 1.	Representative Alexander
SB 1225	2004 Technical Corrections Act.	Senator Hartsell
HB 1046	Aggressive Driving.	Representative Hackney
HB 1519	Crime Victim Financial Recovery Assist. Act.	Representative Holliman Representative Eddins
HB 1345	DOT Technical Correction.	Representative Crawford, Jr.

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 8, 2004

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 8:35 a.m. with fifteen members present. He introduced Pages, Christine Brown, from Providence, NC, Laura Nelle Parnell, from Charlotte, NC, Lauren Miller from Raleigh, NC, Melanie Houston, from Bellville, NC and Susan Spencer from Richlands, NC.

HB-1449 (APA Technical/Clarifying Changes) Committee Substitute, which had been previously discussed in Committee, was reintroduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

HB-1354 (Strengthen Domestic Violence Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell, explained that the changes would strengthen the laws against domestic violence, and provide additional assistance to domestic violence victims. See Bill Summary for further information. Senator's R.C. Soles, David Hoyle, and Phillip Berger had questions. Bill sponsor, Representative Wilma Sherrill answered the questions. Staff attorney, Susan Sitze explained the custody issue. Senator Berger offered an amendment to the bill, and explained the amendment. Representative Deborah Ross spoke on the amendment. Mr. Sam Johnson and Mr. Bruce Clarke from NCAI, ECNC spoke in favor of the amendment. Ms. Perri Morgan with National Association of Independent Business spoke on the bill. Labor Attorney, Tracy Kimball with Parker Poe, and Mr. W. Polk, Director, NC Department of Justice, and Attorney, Ms. Beth Froehling, attorney with NC CADV spoke against the amendment. Senator's R.C. Soles, David Hoyle, Martin Nesbitt, and Jeanne Lucas had questions. Rep. Ross and Senator Clodfelter answered the questions. Senator Clodfelter called for a vote on the amendment. All members voted yes. Motion carried. Amendment adopted. Senator Lucas offered a second amendment to the bill. Majority of members voted no. Motion carried. Amendment failed. Senator Soles offered a third amendment. All members voted yes. Motion carried. Amendment adopted. Senator Hargett offered a fourth amendment. After some discussion, he withdrew the amendment. See attached amendments. Senator Berger moved for a Favorable Report to the bill as amended. All members voted yes. Motion carried. The bill was referred to the Finance Committee.

HB-1119 (Election Law Changes-1 Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative Martha Alexander, Staff attorney, Bill Gilkeson explained changes to the bill. See Bill Summary for further information. Mr. Gary Bartlett, NC Board of Elections spoke on the bill. Senator's Martin Nesbitt and Phillip Berger had questions. Mr. Gilkeson answered the questions. Senator Berger offered an amendment to the bill. All members voted yes on the amendment. Amendment adopted. Senator Martin Nesbitt offered an amendment to the bill. All members voted yes. Amendment adopted. Senator Clodfelter asked for discussion, and moved to delete Section 17 of the bill. All members voted yes. Section 17 was deleted. Senator Jeanne Lucas moved for a Favorable Report to the bill as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:28 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, July 08, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1354** Strengthen Domestic Violence Laws.

Draft Number:	PCS 70495
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1449** APA Technical/Clarifying Changes.

Draft Number:	PCS 60526
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, July 09, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1119** Election Law Changes - 1.

Draft Number:	PCS 70496
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1449*

Committee Substitute Favorable 6/15/04
Senate Judiciary I Committee Substitute Adopted 6/30/04
PROPOSED SENATE COMMITTEE SUBSTITUTE H1449-PCS60526-RO-46

Short Title: APA Technical/Clarifying Changes. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~ Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.
d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
a. In accordance with the provisions of G.S. 163-22.2.
b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:
a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.
b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Department shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.~~

~~(2) Accept oral and written comments on the proposed temporary rule.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~(a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~(a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in

subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection

must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b) reads as rewritten:

"(b) Permanent Rule. – A permanent rule approved by the Commission becomes effective on the first day of the month following the month the rule is approved by the Commission, unless the Commission received written objections to the rule in accordance with subsection (b2) of this ~~section.~~ section, or unless the agency that adopted the rule specifies a later effective date."

SECTION 3. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. The Commission shall notify the agency that the rule is subject to legislative disapproval on the day following the day it receives 10 or more written objections. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register. If the Commission receives objections from 10 or more persons clearly requesting review by the legislature, and the rule objected to is one of a group of related rules adopted by the agency at the same time, the agency that adopted the rule may cause any of the other rules in the group to become effective as provided in subsection (b1) of this section by submitting a written statement to that effect to the Commission before the other rules become effective."

SECTION 4. G.S. 150B-33(b) is amended by adding the following subdivision to read:

"(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision."

SECTION 5. Section 4 of this act becomes effective October 1, 2004, and applies to contested cases commenced on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1449:
APA Technical/Clarifying Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Fisher
Date:	July 8, 2004	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute H1449-CSRO-46[v.1]		Staff Attorney

SUMMARY: ***This bill makes the following technical and clarifying changes to the Administrative Procedure Act (APA).***

- ***Clarifies the temporary rule-making requirements in connection with the State Medical Facilities Plan.***
- ***Conforms the formatting of the temporary rule section.***
- ***Restores language that was inadvertently deleted.***
- ***Clarifies the current practice allowing agencies to specify a later effective date for rules.***
- ***Clarifies that written objections requesting legislative review of a rule must be received no later than 5:00 pm of the day after the day the Rules Review Commission approves the rule and that the Commission must notify the agency by the following day.***
- ***Authorizes agencies to subject rules that were adopted together to legislative disapproval when one rule in the group of related rules is made subject to legislative disapproval.***
- ***Authorizes Administrative Law Judges to accept remands of contested cases from an agency when no findings of fact or conclusions of law were made regarding a claim stated in the petition.***

BILL ANALYSIS:

In 2003, the General Assembly enacted House Bill 1151 which made major changes to the rule-making provisions of the APA. House Bill 1151 substantially rewrote G.S. 150B-21.1 which sets forth the procedure for adopting a temporary rule. After the enactment of House Bill 1151, another bill amended the temporary rulemaking section without conforming to the changes made by House Bill 1151. As a result, the numbering of the section is now inconsistent.

This bill makes technical amendments to the temporary rule section to conform the numbering. The bill also restores language that was inadvertently deleted by last year's bill.

The bill adds language to clarify that temporary rules adopted in connection with the State Medical Facilities Plan must be submitted to the Codifier of Rules prior to the effective date of the Plan.

Currently, a permanent rule becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission unless the Commission receives 10 written objections. Section 2 of the bill clarifies that the agency may specify a later effective date. This is currently the practice.

Section 3 of the bill clarifies that written objections requesting legislative review of a rule must be received no later than 5:00 P.M. of the day after the day the Rules Review Commission approves the rule and also directs the Commission to notify the agency by the following day.

Section 3 also contains a provision that was recommended by the Rules Review Commission staff. It addresses the situation when a group of related rules is adopted by an agency at the same time, with the expectation that they would all become effective simultaneously. If any one of the rules in the group is subjected to legislative disapproval as a result of the filing of 10 written objections, the agency may subject any or all of the remaining rules to legislative disapproval by submitting a written statement to the Commission.

Section 4 of the bill authorizes ALJs to accept remands of contested cases from an agency - in situations other than judgment on the pleadings or summary judgment - when no findings of fact or conclusions of law were made in the Judge's decision regarding a specific claim stated in the petition. In order to avoid abuse by agencies, the ALJ may refuse to accept the remand if there is a sufficient record to allow the agency to make a final decision.

Section 4 would become effective October 1, 2004, and the remainder of this bill would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1449*

Committee Substitute Favorable 6/15/04

Senate Judiciary I Committee Substitute Adopted 6/30/04

PROPOSED SENATE COMMITTEE SUBSTITUTE H1449-CSRO-46 [v.1]

7/7/2004 5:28:07 PM

Short Title: APA Technical/Clarifying Changes. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for ~~the~~ a rule establishing review criteria as authorized by G.S. 131E-183(b) to ~~implement~~ complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities ~~Plan.~~ Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.
d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
a. In accordance with the provisions of G.S. 163-22.2.
b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:
a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.
b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Department shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.~~

~~(2) Accept oral and written comments on the proposed temporary rule.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~(a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~(a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in

subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection

must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b) reads as rewritten:

"(b) Permanent Rule. – A permanent rule approved by the Commission becomes effective on the first day of the month following the month the rule is approved by the Commission, unless the Commission received written objections to the rule in accordance with subsection (b2) of this ~~section.~~ section, or unless the agency that adopted the rule specifies a later effective date."

SECTION 3. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. The Commission shall notify the agency that the rule is subject to legislative disapproval on the day following the day it receives 10 or more written objections. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register. If the Commission receives objections from 10 or more persons clearly requesting review by the legislature, and the rule objected to is one of a group of related rules adopted by the agency at the same time, the agency that adopted the rule may cause any of the other rules in the group to become effective as provided in subsection (b1) of this section by submitting a written statement to that effect to the Commission before the other rules become effective."

SECTION 4. G.S. 150B-33(b) is amended by adding the following subdivision to read:

"(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision."

SECTION 5. Section 4 of this act becomes effective October 1, 2004, and applies to contested cases commenced on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1354

Committee Substitute Favorable 6/16/04
Committee Substitute #2 Favorable 6/17/04
Fourth Edition Engrossed 6/22/04
PROPOSED SENATE COMMITTEE SUBSTITUTE H1354-PCS70495-RK-88

Short Title: Strengthen Domestic Violence Laws. (Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS, AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT

SECTION 1.1. G.S. 15A-1343 reads as rewritten:

"**§ 15A-1343. Conditions of probation.**

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
(6) Pay a supervision fee as specified in subsection (c1).
(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).
(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.
(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.
(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises

while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

~~(9a) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) the program is approved by the Domestic Violence Commission.~~

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(b3) Screening and Assessing for Chemical Dependency. – A defendant ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART) operated by the Department of Correction must undergo a screening to determine chemical dependency. If the screening indicates the defendant is chemically dependent, the court shall order an assessment to determine the appropriate level of treatment. The assessment may be conducted either before or after the court imposes the condition, but participation in the program shall be based on the results of the assessment.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon ~~written~~ motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other

organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done.

(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs to be repaid and the method of payment.

(f) Repealed by Session Laws 1983, c. 561, s. 5.

(g) Probation Officer May Determine Payment Schedules. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action."

SECTION 1.2. G.S. 143B-262 is amended by adding a new subsection to read:

"(e) The Department, in consultation with the Domestic Violence Commission, and in accordance with established best practices, shall establish a domestic violence treatment program for offenders sentenced to a term of imprisonment in the custody of the Department and whose official record includes a finding by the court that the offender committed acts of domestic violence.

The Department shall ensure that inmates, whose record includes a finding by the court that the offender committed acts of domestic violence, complete a domestic violence treatment program prior to the completion of the period of incarceration, unless other requirements, deemed critical by the Department, prevent program completion. In the event an inmate does not complete the program during the period of incarceration, the Department shall document, in the inmate's official record, specific reasons why that particular inmate did not or was not able to complete the program."

SECTION 1.3. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART II. DOMESTIC VIOLENCE TRAINING FOR LAW ENFORCEMENT

SECTION 2.1. G.S. 17C-6(a)(2) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position. The standards for entry level employment shall include education and training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence-based prosecutions."

SECTION 2.2. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence education and training required by Section 2.1 of this part is incorporated into all Basic Law Enforcement Training (BLET) courses as soon as practicable. However, the domestic violence education and training shall be part of the required BLET curriculum no later than March 1, 2005.

SECTION 2.3. G.S. 17C-6(a)(14) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards shall include training in response to, and investigation of, domestic violence cases, as well as training investigation for evidence-based prosecutions."

SECTION 2.4. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence in-service training required by Section 2.3 of this part is available no later than March 1, 2005.

SECTION 2.5. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(15) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (14) of this subsection."

SECTION 2.6. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the standards and training required for certification under Section 2.5 of this part are implemented no later than March 1, 2005.

SECTION 2.7. G.S. 17E-4(a)(2) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

...

(2) Establish minimum educational and training standards that may be met in order to qualify for entry level employment as an officer in temporary or probationary status or in a permanent ~~position;~~ position. The standards for entry level employment of officers shall include

training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence-based prosecutions. For purposes of the domestic violence training requirement, the term 'officers' shall include justice officers as defined in G.S. 17E-2(3)a., except that the term shall not include 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

SECTION 2.8. The North Carolina Sheriffs' Education and Training Standards Commission shall ensure that the domestic violence education and training required by Section 2.7 of this part is incorporated into all Basic Law Enforcement Training (BLET) courses as soon as practicable. However, the domestic violence education and training shall be part of the required BLET curriculum no later than March 1, 2005.

SECTION 2.9. G.S. 17E-4(a)(10) reads as rewritten:

"(10) Enter into contracts incident to the administration of its authority pursuant to this ~~Chapter.~~Chapter;".

SECTION 2.10. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"(11) Establish minimum standards for in-service training for justice officers. In-service training standards shall include training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence-based prosecutions. For purposes of the domestic violence training requirement, the term 'justice officer' shall include those defined in G.S. 17E-2(3)a., except that the term shall not include 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

SECTION 2.11. The North Carolina Sheriffs' Education and Training Standards Commission shall ensure that the domestic violence in-service training required by Section 2.9 of this part is available no later than March 1, 2005.

SECTION 2.12. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"(12) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (11) of this subsection."

SECTION 2.13. The North Carolina Sheriffs' Education and Training Standards Commission shall ensure that the standards and training required for certification under Section 2.11 of this part are implemented no later than March 1, 2005.

SECTION 2.14. The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall report to the General Assembly on or before March 1, 2005, on the exact standards implemented and the dates they were implemented.

SECTION 2.15. This part is effective when it becomes law.

PART III. STUDY OF ANTIVIOLENCE EDUCATION IN SCHOOLS AND TRAINING FOR SCHOOL PERSONNEL

SECTION 3.1. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study the issue of antiviolence programs in the schools. In studying this issue, the Department shall answer the following:

(1) How are schools currently addressing antiviolence in their curriculum;
(2) How do current curriculums vary at each grade level, K-12;
(3) Do currently used curriculums address physical violence and mental or verbal abuse, particularly instances of domestic and relationship violence;
(4) Should the State require every public school to have an antiviolence program of instruction incorporated into the curriculum;
(5) Should an antiviolence program be required at every grade level;
(6) What would be an appropriate curriculum for each grade level;
(7) What minimum requirements should be present in an appropriate curriculum to ensure that the curriculum addresses physical violence, mental or verbal abuse, and domestic and relationship violence;
(8) Should the State implement a particular antiviolence curriculum or allow individual schools to choose an appropriate curriculum from an approved list; and
(9) What is the fiscal impact of implementing an antiviolence program for all schools, including additional staffing needs, if any.

In studying this issue, the Department shall examine some of the antiviolence programs that are in use throughout the country. In addition to any other specific programs examined, the Department shall review in detail the "Second Step" program developed by the Committee for Children.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than November 15, 2004, and a final report to the Joint Legislative Education Oversight Committee and the General Assembly on or before January 15, 2005.

SECTION 3.2. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study training for school personnel dealing with students who are victims of physical violence and mental or verbal abuse, particularly instances of domestic violence and relationship violence. In studying this issue, the Department shall answer the following:

(1) What type of training is currently available and/or required for school personnel.
(2) Should training be required for school personnel.
(3) If training should be required, which school personnel should be required to receive the training.
(4) What type of training should be required.
(5) What is the fiscal impact of requiring school personnel to receive such training.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than November 15, 2004, and a final report to the Joint Legislative Education Oversight Committee and the General Assembly on or before January 15, 2005.

SECTION 3.3. This part is effective when it becomes law.

PART IV. LEGAL SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE

SECTION 4.1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 37B.

"Domestic Violence Victim Assistance Act.

"**§ 7A-474.6. Legislative findings and purpose.**

The General Assembly of North Carolina declares it to be its purpose to provide access to legal representation for domestic violence victims in certain kinds of civil matters. The General Assembly finds that such representation can best be provided in an efficient, effective, and economic manner through established legal services programs in this State.

"**§ 7A-474.7. Definitions.**

The following definitions shall apply throughout this Article, unless the context otherwise requires:

(1) "Domestic violence victim" means a resident of North Carolina that has been subjected to acts of domestic violence as defined in G.S. 50B-1. A resident is not required to seek a protective order under Chapter 50B of the General Statutes to qualify as a domestic violence victim under this Article.

(2) "Legal assistance" means the provision of any legal services, as defined by Chapter 84 of the General Statutes, consistent with this Article. Provided, that all legal services provided hereunder shall be performed consistently with the Rules of Professional Conduct promulgated by the North Carolina State Bar. Provided, further, that no funds appropriated under this Article shall be used for lobbying to influence the passage or defeat of any legislation before any municipal, county, state, or national legislative body.

(3) "Established legal services program" means the following not-for-profit corporations using State funds to serve the counties listed: Legal Aid Society of Northwest North Carolina, serving Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties; Pisgah Legal Services, serving Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; and Legal Aid of North Carolina; or any successor entity or entities of the named organizations, or, should any of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area.

"**§ 7A-474.8. Eligible activities and limitations.**

(a) Eligible Activities. – Funds appropriated under this Article shall be used only for the following purposes:

(1) To provide legal assistance to domestic violence victims.

(2) To provide education to domestic violence victims regarding their rights and duties under the law.

(3) To involve the private bar in the representation of domestic violence victims pursuant to this Article.

(b) Eligible Cases. – The funds shall be prioritized by each legal services program to serve the greatest number of eligible clients, with emphasis placed on representation of clients needing legal assistance with proceedings pursuant to Chapter 50B of the General Statutes. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Actions for protective orders issued pursuant to Chapter 50B of the General Statutes;

(2) Child custody and visitation issues; and

(3) Legal services which ensure the safety of the client and the client's children.

(c) Limitations. – No funds appropriated under this Article shall be used for any of the following purposes:

(1) To provide legal assistance with respect to any criminal proceeding; or

(2) To provide legal assistance to any prisoner within the North Carolina Department of Correction with regard to the terms of that person's incarceration.

"**§ 7A-474.9. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties, and Legal Aid Society of Northwest North Carolina receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties. Funds shall be allocated to each program based on the counties served by that program using the following formula:

(1) Twenty percent (20%) based on a fixed equal dollar amount for each county.

(2) Eighty percent (80%) based on the rate of civil actions filed pursuant to Chapter 50B of the General Statutes in that county.

The North Carolina State Bar shall not use any of these funds for its administrative costs.

"**§ 7A-474.10. Records and reports.**

The established legal services programs shall keep appropriate records and make periodic reports, as requested, to the North Carolina State Bar. The North Carolina State Bar shall report annually to the General Assembly on the amount of the funds disbursed and the use of the funds by each legal services program receiving funds. The report to

the General Assembly shall be made by January 15 of each year beginning January 15, 2006."

SECTION 4.2. G.S. 84-4.1 reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

(7) A fee in the amount of one hundred dollars ($100.00) for support of the General Court of Justice, to be remitted to the State Treasurer. The State Treasurer shall remit the fee collected under this subdivision to

the North Carolina State Bar for the provision of services described in G.S. 7A-474.9.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

SECTION 4.3. Section 4.1 of this part is effective when it becomes law. Section 4.2 of this part becomes effective October 1, 2004, and applies to all motions filed on or after that date. The remainder of this part is effective when it becomes law.

PART V. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY TASK FORCE

SECTION 5.1. G.S. 7B-1402 reads as rewritten:

"**§ 7B-1402. Task Force – creation; membership; vacancies.**

(a) There is created the North Carolina Child Fatality Task Force within the Department of Health and Human Services for budgetary purposes only.

(b) The Task Force shall be composed of 35 members, 11 of whom shall be ex officio members, four of whom shall be appointed by the Governor, 10 of whom shall be appointed by the Speaker of the House of Representatives, and 10 of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;
(2) The Attorney General;
(3) The Director of the Division of Social Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
(6) The Director of the Governor's Youth Advocacy and Involvement Office;
(7) The Superintendent of Public Instruction;
(8) The Chairman of the State Board of Education;
(9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
(10) The Secretary of the Department of Health and Human Services;
(11) The Director of the Administrative Office of the Courts;
(12) A director of a county department of social services, appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
(13) A representative from a Sudden Infant Death Syndrome counseling and education program, appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
(14) A representative from the North Carolina Child Advocacy Institute, appointed by the Governor upon recommendation of the President of the Institute;

(15) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;

(16) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;

(17) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;

(18) A representative from the North Carolina League of Municipalities, appointed by the Speaker of the House of Representatives upon recommendation of the League;

(18a) A representative from the North Carolina Domestic Violence Commission, appointed by the Speaker of the House of Representatives upon recommendation of the Director of the Commission;

(19) ~~Two public members,~~One public member, appointed by the Speaker of the House of Representatives;

(20) A county or municipal law enforcement officer, appointed by the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;

(21) A district attorney, appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;

(22) A representative from the North Carolina Association of County Commissioners, appointed by the President Pro Tempore of the Senate upon recommendation of the Association;

(22a) A representative from the North Carolina Coalition Against Domestic Violence, appointed by the President Pro Tempore of the Senate upon recommendation of the Executive Director of the Coalition;

(23) ~~Two public members,~~One public member, appointed by the President Pro Tempore of the Senate; and

(24) Five members of the Senate, appointed by the President Pro Tempore of the Senate, and five members of the House of Representatives, appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. Terms shall be two years. The members shall elect a chair who shall preside for the duration of the chair's term as member. In the event a vacancy occurs in the chair before the expiration of the chair's term, the members shall elect an acting chair to serve for the remainder of the unexpired term."

SECTION 5.2. The public members serving on the Child Fatality Task Force on the effective date of this act shall complete their current terms. The new

appointments contained in Section 1 of this act shall take effect at the end of those terms.

SECTION 5.3. This part is effective when it becomes law.

PART VI. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC VIOLENCE VICTIMS

SECTION 6.1. The Department of Health and Human Services shall study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs. The plan will address providing diagnostic and referral services for any client suspected of having a mental illness or a substance abuse problem. The plan will also address the delivery of appropriate services to clients meeting the target population criteria, as defined in the State Plan developed pursuant to G.S. 122C-102. Services must be best practices, as determined by the Department. The Department will consult various stakeholders in the domestic violence network of organizations. The Department will also consider the delivery of services to children identified through domestic violence programs. The Department shall also consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than October 1, 2004, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and the General Assembly on or before January 15, 2005.

SECTION 6.2. This part is effective when it becomes law.

PART VII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL REPRESENTATION

SECTION 7.1. The North Carolina State Bar, in cooperation with the North Carolina Bar Association, shall study the issue of providing Continuing Legal Education (CLE) credit to active attorneys for providing pro bono legal representation. The Bar shall consider what types of pro bono legal representation, if any, should qualify for CLE credit and what administrative requirements would be necessary to provide such credit. The Bar shall specifically look at the possible benefits of providing CLE credit for pro bono legal representation to domestic violence victims. The Bar shall also consider the fiscal impact, if any, of providing the credit.

The Bar shall make a preliminary report to the House Select Committee on Domestic Violence no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 7.2. This part is effective when it becomes law.

PART VIII. DOMESTIC RELATIONSHIP AGGRAVATING FACTOR

SECTION 8.1. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or ~~confidence~~ confidence, including a domestic relationship, to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 8.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART IX. CREATE STRANGULATION OFFENSE

SECTION 9.1. G.S. 14-32.4 reads as rewritten:

"**§ 14-32.4. Assault inflicting serious bodily ~~injury.~~injury; strangulation; penalties.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony."

SECTION 9.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART X. AMEND HABITUAL MISDEMEANOR ASSAULT STATUTE

SECTION 10.1. G.S. 14-33.2 reads as rewritten:

"**§ 14-33.2. Habitual misdemeanor assault.**

A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of ~~G.S. 14-33(c) or G.S. 14-34~~G.S. 14-33 and causes physical injury, or G.S. 14-34, and has two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions occurring no more than 15

years prior to the date of the current violation.~~been convicted of five or more prior misdemeanor convictions, two of which were assaults.~~ A conviction under this section shall not be used as a prior conviction for any other habitual offense statute. A person convicted of violating this section is guilty of a Class H felony."

SECTION 10.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this part are not abated or affected by this part, and the statutory provisions that would be applicable but for this part remain applicable to those prosecutions.

PART XI. DOMESTIC VIOLENCE OFFENSE TRACKING

SECTION 11.1. Article 86 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

(a) When a defendant is found guilty of an offense involving assault, or communicating a threat, the presiding judge shall determine whether the defendant and victim had a personal relationship. If the judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate on the form reflecting the judgment that the case involved domestic violence. The clerk of court shall insure that the official record of the defendant's conviction includes the court's determination, so that any inquiry into the defendant's criminal record will reflect that the offense involved domestic violence.

(b) If the presiding judge determines that there was a personal relationship between the defendant and the victim, and a sentence to community punishment is imposed, the judge shall determine whether the defendant shall comply with one or more of the special conditions of probation set forth at G.S. 15A-1343(b1), in addition to any other authorized punishment. Notwithstanding the provisions of G.S. 15A-1340.11(6)c, the court may require the defendant to comply with the provisions of G.S. 15A-1343(b1)(3c).

(c) The following definitions apply to this section:

(1) "Personal relationship" is as defined in G.S. 50B-1(b).

(2) "An offense involving assault" includes any offense where an assault occurred, whether or not the conviction is for an offense under Article 8 of Chapter 14 of the General Statutes.

(3) "Inquiry" shall include any lawful review of the criminal records of persons convicted of an offense in this State, whether by law enforcement personnel or by private individuals."

SECTION 11.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART XII. STUDY OF MISDEMEANOR OFFENSE CLASSIFICATIONS

SECTION 12.1. The General Assembly finds that the North Carolina Sentencing and Policy Advisory Commission has adopted formal criteria for classifying felony offenses. The Sentencing Commission has identified three general types of harms: harms to persons (including both physical and mental injury); harms to property; and harms to society. The degrees of harm are divided into three levels:

(1) Injury to person, property, or society;
(2) Significant injury to person, property, or society; and
(3) Serious injury to person, property, or society. The stated purpose of establishing the criteria was "to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future."

In contrast to the felony classification criteria, the Commission did not create classification criteria for misdemeanors. However, the current misdemeanor sentencing laws include an assault offense that has serious injury as an element – even though "serious injury to a person" is a category of harm for felony offense classification. The General Assembly finds that the classification of assault offenses that involve serious injury as misdemeanors is inconsistent with the Sentencing Commission's classification of felonies based on harm.

The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study the classification of misdemeanor offenses. In particular, the Commission shall examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. The Commission shall develop a system for classifying misdemeanor offenses on the basis of their severity. The Commission may consider reclassifying existing offenses and creating new offenses in order to insure proportionality and consistency. The Commission shall report its findings and recommendations to the 2005 General Assembly, 2005 Regular Session. The report shall describe the status of the Commission's work and shall include any completed policy recommendations and proposed legislation. The Commission shall make a final report to the 2005 General Assembly, 2006 Regular Session.

SECTION 12.2. This part is effective when it becomes law.

PART XIII. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS

SECTION 13.1. G.S. 15A-401 reads as rewritten:

"**§ 15A-401. Arrest by law-enforcement officer.**

(a) Arrest by Officer Pursuant to a Warrant. –
(1) Warrant in Possession of Officer. – An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.
(2) Warrant Not in Possession of Officer. – An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.

(b) Arrest by Officer Without a Warrant. –

(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under ~~G.S. 50B-4.1(a).~~G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under G.S. 15A-534.1(a)(2).

(3) Repealed by Session Laws 1991, c. 150.

(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5.

(c) How Arrest Made. –

(1) An arrest is complete when:

a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or

b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.

(2) Upon making an arrest, a law-enforcement officer must:

a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,

b. Inform the arrested person that he is under arrest, and

c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.

(d) Use of Force in Arrest. –

(1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:
a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or
b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:
a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;
b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or
c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(e) Entry on Private Premises or Vehicle; Use of Force. –
(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:
a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,
b. The officer has reasonable cause to believe the person to be arrested is present, and
c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there

is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose.

(f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –

(1) A person is not justified in using a deadly weapon or deadly force to resist an arrest by a law-enforcement officer using reasonable force, when the person knows or has reason to know that the officer is a law-enforcement officer and that the officer is effecting or attempting to effect an arrest.

(2) The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.

(3) Nothing contained in this subsection (f) shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest. Nothing contained in this subsection (f) shall be construed to bar or limit any civil action arising out of an arrest not authorized by this Article."

SECTION 13.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART XIV. CONFORM STATE FIREARMS LAW TO FEDERAL LAW

SECTION 14.1. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any ~~handgun or other firearm~~ firearm~~with a barrel length of less than 18 inches or an overall length of less than 26 inches,~~ or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer.

Every person violating the provisions of this section shall be punished as a Class G felon.

~~Nothing in this subsection would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business.~~

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially

similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefore, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein."

SECTION 14.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutory provisions that would be applicable but for this act remain applicable to those prosecutions.

PART XV. SPECIFICALLY ALLOW CROSS-WARRANTS

SECTION 15.1. G.S. 15A-304 reads as rewritten:

"**§ 15A-304. Warrant for arrest.**

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

(c) Statement of the Crime. – The warrant must contain a statement of the crime of which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe

that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or more of the following:

(1) Affidavit;

(2) Oral testimony under oath or affirmation before the issuing official; or

(3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

If the information is insufficient to show probable cause, the warrant may not be issued. A judicial official shall not refuse to issue a warrant for the arrest of a person solely because a prior warrant has been issued for the arrest of another person involved in the same matter.

(e) Order for Arrest. – The order for arrest must direct that a law-enforcement officer take the defendant into custody and bring him without unnecessary delay before a judicial official to answer to the charges made against him.

(f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued by:

(1) A Justice of the Supreme Court.

(2) A judge of the Court of Appeals.

(3) A judge of the superior court.

(4) A judge of the district court, as provided in G.S. 7A-291.

(5) A clerk, as provided in G.S. 7A-180 and 7A-181.

(6) A magistrate, as provided in G.S. 7A-273."

SECTION 15.2. This part is effective when it becomes law.

PART XVI. CLARIFY NURSE'S PRIVILEGE

SECTION 16.1. G.S. 8-53.13 reads as rewritten:

"**§ 8-53.13. Nurse privilege.**

No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional nursing services, and which information was necessary to enable that person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule. Nothing in this section shall preclude the admission of otherwise admissible written or printed medical records in any judicial proceeding, in accordance with the procedure set forth in G.S. 8-44.1, after a determination by the court that disclosure should be compelled as set forth herein."

SECTION 16.2. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child abuse.**

Notwithstanding the provisions of G.S. ~~8-53,~~ 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina."

SECTION 16.3. This part becomes effective December 1, 2004.

PART XVII. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE HEARINGS

SECTION 17.1. G.S. 50-13.2(b) reads as rewritten:

"(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic ~~violence.~~violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). ~~Such orders may include a designation of time and place for the exchange of children away from the abused party, the participation of a third party, or supervised visitation.~~ If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child."

SECTION 17.2. G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary ~~orders.~~ orders; temporary custody.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(b) Emergency Relief. – A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an

ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c) Ex Parte Orders. – Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts provided, however, that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the court shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the court finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the court determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the court shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more

hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the magistrate determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody ~~to~~ pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 17.3. G.S. 50B-3(a)(4) reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order to bring about a cessation of acts of domestic violence. The orders may:

...

(4) Award temporary custody of minor children and establish temporary visitation ~~rights;~~rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process;

..."

SECTION 17.4. G.S. 50B-3 is amended by adding the following new subsection to read:

"(a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

(1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.

(2) For purposes of determining custody and visitation issues, the court shall consider:

a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.

b. Whether the minor child was present during acts of domestic violence.

c. Whether a weapon was used or threatened to be used during any act of domestic violence.

d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.

e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.

f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.

g. Whether there is a pattern of abuse against an aggrieved party or the minor child.

h. Whether a party has abused or endangered the minor child during visitation.

i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.

j. Whether a party has improperly concealed or detained the minor child.

k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.

(3) If the court awards custody, the court shall also consider whether visitation is in the best interest of the minor child. If ordering visitation, the court shall provide for the safety and well-being of the minor child and the safety of the aggrieved party. The court may consider any of the following:

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.

b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.

c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.

d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.

e. Ordering the noncustodial parent to pay the costs of supervised visitation.

f. Prohibiting overnight visitation.

g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.

h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.

i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter."

SECTION 17.5. G.S. 50B-3(b) reads as rewritten:

"(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current ~~order.~~order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved."

SECTION 17.6. This part becomes effective October 1, 2004, and applies to actions filed on or after that date.

PART XVIII. PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST DOMESTIC VIOLENCE VICTIMS

SECTION 18.1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-5.5. Employment discrimination unlawful.**

"(a) No employer shall take tangible employment action against an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this Chapter. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer in writing, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The sole fact that the employer's alleged unlawful act was subsequent to the employee's alleged protected activity does not, by itself, constitute sufficient proof that the employer violated subsection (a).

(c) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article."

SECTION 18.2. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
   a. Chapter 97 of the General Statutes.
   b. Article 2A or Article 16 of this Chapter.
   c. Article 2A of Chapter 74 of the General Statutes.
   d. G.S. 95-28.1.
   e. Article 16 of Chapter 127A of the General Statutes.
   f. G.S. 95-28.1A.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.

(5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5."

SECTION 18.3. This part becomes effective October 1, 2004, and applies to actions filed on or after that date.

PART XIX. PRIVACY FOR 50B INTAKE

SECTION 19.1. G.S. 50B-2(d) reads as rewritten:

"(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms ~~which~~ that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The ~~Clerk~~ clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 19.2. This part is effective when it becomes law.

PART XX. TRAINING FOR JUDGES AND COURT PERSONNEL

SECTION 20.1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 20.2. The Administrative Office of the Courts shall study the issue of training for court personnel in the area of domestic violence. The study shall examine the following:

(1) The extent to which training is currently being done.
(2) The need for additional training.
(3) The amount and types of training that would be most appropriate.
(4) The potential costs and sources of funding for any additional training.

The Administrative Office of the Courts shall report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

SECTION 20.3. This part is effective when it becomes law.

PART XXI. EFFECTIVE DATE

SECTION 21. Except as otherwise provided in this act, this act is effective when it becomes law.

Original

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1354

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H1354-ARK-70 [v.5]

Date 7-8 ,2004

Comm. Sub. [YES]
Amends Title [NO]
H1354-csrk-88

Senator Berger

moves to amend the bill on page 30, lines 8-17, by rewriting the lines to read:

"(a) No employer shall take tangible employment action against an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this Chapter. An employee who is absent from the work place shall follow the employer's usual time off policy or procedure, including advance notice to the employer in writing, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the work place.

(b) The sole fact that the employer's alleged unlawful act was subsequent to the employee's alleged protected activity does not, by itself, constitute sufficient proof that the employer violated subsection (a).

(c) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article.", and

moves to amend the bill on page 30, line 38, by rewriting the line to read:

"(5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1354

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1354-ARK-70 [v.5]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

original

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H1354 DATE 7-8-04

S. B. No. _____ Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1354-SMCK-88 AS AMENDED

Rep.)
) Lucas
Sen.)

1 moves to amend the bill on page 30, lines 3-40 (as amended)
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines and renumbering the remaining
4 parts and sections accordingly
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Joanne Lucas

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

original

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1354 DATE 7-8-04

S. B. No. _____ Amendment No. #3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1354-SMRCK-88[v.4]

Rep.) Sokes
(Sen.)

moves to amend the bill on page 5, line 28

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"fee only for good cause and upon ~~written~~ motion of the person placed on supervised."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Original

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-8-04

S. B. No. _____ Amendment No. #4
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1354

Rep.) HARGETT (#4)
Sen)

moves to amend the bill on page 22, line 26

( ) WHICH CHANGES THE TITLE

by inserting the following after the word "felony":

"involving a deadly weapon",

~~and on page 22, line 40,~~

and on page 22, line 40, by inserting the following after the word ~~"CONVICTED"~~ "CAROLINA":

"involving a deadly weapon".

SIGNED Cecil Hargett

WITHDRAWN

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1354 PCS:
Strengthen Domestic Violence Laws

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	July 8, 2004	**Summary by:**	Susan Sitze and Hal Pell, Staff Attorneys
Version:	PCS H1354-smrk-88		

SUMMARY: ***The PCS to House Bill 1354 strengthens the laws against domestic violence, provides additional assistance to domestic violence victims and makes other changes as recommended by the House Select Committee on Domestic Violence.***

BILL ANALYSIS:

Part I – Domestic Violence Offender Treatment

Section 1.1 requires attendance and completion of an abuser treatment program while on probation if the court finds that the defendant is responsible for acts of domestic violence and there is a program reasonably available to the defendant. If the court makes those findings, the court must order the treatment as a regular condition of probation unless the court finds that it would not be in the best interest of justice.

Section 1.2 requires the Department of Correction to establish a domestic violence treatment program for offenders in the custody of the Department whose official record includes a finding by the court that the offender committed acts of domestic violence. The Department must ensure that those inmates complete the domestic violence treatment program prior to being released, unless other requirements, deemed critical by the Department prevent program completion. If the inmate does not complete the program, the Department must document, in the inmate's official record, specific reasons why that inmate did not or was not able to complete the program.

Section 1.3 provides that this part is effective December 1, 2004 and applies to offenses committed on or after that date.

Part II – Domestic Violence Training for Law Enforcement

Sections 2.1 through 2.15 require the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission to establish minimum standards for training of law enforcement officers in domestic violence. The training standards shall be developed for entry-level employment, for in-service training, and for certification of instructors, and shall include training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence based prosecutions.

The Commissions must have the training in place no later than March 1, 2005 and shall report to the General Assembly on or before March 1, 2005 on the exact standards implemented and the date they were implemented.

Part III – Study of Anti-Violence Education in Schools and Training for School Personnel

Section 3.1 requires the Department of Public Instruction, in collaboration with the State Board of Education, to study the issue of anti-violence programs in schools. The Department is directed to address several questions and to look at different programs used across the country.

The Department shall issue a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee by November 15, 2004, and a final report to Education Oversight and the General Assembly by January 15, 2005.

Section 3.2 requires the Department of Public Instruction, in collaboration with the State Board of Education, to study training for school personnel dealing with students who are victims of physical violence and mental or verbal abuse, particularly instances of domestic and relationship violence.

The Department shall issue a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee by November 15, 2004, and a final report to Education Oversight and the General Assembly by January 15, 2005.

Part IV – Legal Services for Victims of Domestic Violence

Section 4.1 creates a new Domestic Violence Victim Assistance Act to provide legal services to domestic violence victims. This section requires the North Carolina State Bar to disperse funds under this act to legal services organizations that provide legal services to domestic violence victims.

The funds are disbursed to the organizations based on the counties they serve, with each county receiving a fixed 20% amount and the remaining 80% of the funds distributed to the counties based on the rate of actions filed for 50B domestic violence protective orders in that county.

Section 4.2 creates a $100 fee for pro hac vice motions in North Carolina. A pro hac vice occurs when an out of state attorney, who is not licensed to practice law in North Carolina, asks a North Carolina court to allow that attorney to appear in court in North Carolina for one particular case. Currently, North Carolina does not charge any fee for these motions, although many states do.

The fees collected under this section would go to the North Carolina State Bar to fund the Domestic Violence Victim Assistance Act created in Section 4.1.

[Fees are charges for services received and must not be more than the amount needed to cover the cost of the service. If a fee exceeds this cost, it is no longer a fee, it is a tax. However, even if some revenue raised by a fee is used for purposes other than the regulation or protection of an item or activity on which the fee is imposed, it will still be considered a fee as long as the expenditure of revenue bears a direct and reasonable relationship to the primary purpose of enforcing the laws governing them.

Arguably, there is an issue as to whether this $100 fee is, in fact, a fee or is more appropriately characterized as a tax. The distinction is relevant to the extent that taxes, unlike most fees, are subject to certain constitutional restrictions. This fee could be characterized as a tax for two reasons: (1) there does not appear to be a direct correlation between the amount of the fee and the cost to the court system for processing *pro hac vice* motions; and (2) the proceeds of the fee would not be used to defray the costs of the department or agency providing the service, but would be remitted to the North Carolina State Bar to fund legal services for domestic violence victims. However, if a court were to find that a "direct and reasonable relationship" exists between the regulation of the practice of law by out-of-state attorneys and the funding of legal services for domestic violence victims, then the $100 charge would likely be upheld as a fee.] Note: The bracketed written by Trina Griffin, House Finance Committee Counsel.

Part V – Domestic Violence Advocates on Child Fatality Task Force

Sections 5.1 through 5.3 add two domestic violence advocates to the Child Fatality Task Force. This provision removes 2 public members from the task force and adds a representative from the North Carolina Domestic Violence Commission, appointed by the Speaker, and a representative from the North

Carolina Coalition Against Domestic Violence, appointed by the President Pro Tempore. The public members being removed shall complete their current terms.

Part VI – Study of Mental Health Services for Domestic Violence Victims

Section 6.1 requires the Department of Health and Human Services to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs, including providing diagnostic and referral services.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services by October 1, 2004, and a final report to Mental Health Oversight and the General Assembly by January 15, 2005.

Part VII – Study of CLE Credit for Pro Bono Legal Representation

Section 7.1 requires the North Carolina State Bar, in cooperation with the North Carolina Bar Association, to study the issue of providing Continuing Legal Education (CLE) credit to active attorneys for providing pro bono legal representation. The Bar shall make a preliminary report to the House Select Committee on Domestic Violence by October 1, 2004 and a final report to the General Assembly by January 15, 2005.

Part VIII – Domestic Relationship Aggravating Factor

Section 8.1 would amend the portion of the Criminal Procedure Act that applies to aggravating the sentence for a defendant who has been convicted of a felony offense. In felony sentencing, there are three ranges for the sentencing judge to determine a **minimum** sentence length.

Following is an example of the sentencing options for a person who has been convicted of a Class D felony, and who has no prior record points (no prior offenses):

Aggravated Range: 64-80 Months

Presumptive Range: 51-64 Months

Mitigated Range: 38-51 Months

If a court finds that aggravating or mitigating circumstances exist, it may depart from the presumptive range. If the aggravating factors present outweigh the mitigating factors that may be present, then the court may sentence in the aggravated range (and vice versa). [note: if a firearm is used, displayed, or threatened to be used in the course of the offense, a separate statute provides that an additional 60 months may be added to the minimum sentence.]

One of the current statutory aggravating factors is set forth at G.S. 15A-1340.16(d)(15): "The defendant took advantage of a position of trust or confidence to commit the offense." The factor has generally been applied to defendants who have been in a fiduciary relationship with the victim, e.g., embezzled money from the victim.

The proposed amendment would clarify that a defendant may also take advantage of the trust or confidence in a domestic relationship to commit the offense. "Domestic relationship" is not defined in the section; however, domestic violence is defined by statute [G.S. 50B-1(a)], and applies to those whom the defendant has a "personal relationship." G.S. 14-134.3, Domestic Criminal Trespass, has a more restrictive application. It applies to a present or former spouse, or where the parties had lived together as married. The State has the burden of proving that the defendant did, in fact, take advantage of the

relationship to commit the offense. If the trial judge sentences in the aggravated (or mitigated) range, then the judge must make written findings.

Part IX – Create Strangulation Offense

Section 9.1 would create a new criminal offense: assault by strangulation. The offense would be a Class H felony. The State would have the burden of proving that the defendant attempted to strangle the victim, and cause physical injury by the act of strangulation. A first time offender would be subject to community punishment, intermediate punishment, or an active sentence. The presumptive range for an active sentence would be a minimum of 5-6 months.

Although the term "serious bodily injury" is defined by statute, the terms "serious injury" and "physical injury" are not. Whether or not serious or physical injury has occurred is a jury determination, based upon common law.

Background: "Death by strangulation", is an accepted medical conclusion and finding in North Carolina homicide cases following the introduction of evidence by testifying medical examiners or health care professionals. Symptoms of strangulation include scleral hemorrhaging (blood vessels in the eyes), and a swollen tongue bleeding around the edges.

The act of "non-fatal" strangulation, or the attempt to strangle, may be charged as a "simple assault (Class 2 misdemeanor), or as a Class A1 misdemeanor if the victim is a female (Assault on a Female), or if serious injury is inflicted.

A Class 2 misdemeanant (first time offender) is subject to a maximum of 30 days community punishment. Class A1 misdemeanant (first offense) may receive up to 60 days of community punishment, intermediate punishment, or active sentence.

If a court finds that the perpetrator used his hands as a deadly weapon, and inflicted serious injury, then the defendant may be found guilty as a Class E felon. A Class E felon is subject to either an intermediate punishment, or an active minimum sentence of 20-25 months (presumptive range).

Strangulation has been found to be a significant lethality factor in domestic violence cases. In North Carolina, five of the 74 domestic violence homicide victims in 2002 were strangled to death.

Other Jurisdictions: It is a felony in Missouri to commit a domestic assault by "choking or strangulation". Virginia, as part of its armed robbery statute, provides that if an armed robbery is accomplished by "partial strangulation, or suffocation," then the defendant is subject to a minimum sentence of five years in prison and up to a life sentence.

Part X – Amend Habitual Misdemeanor Assault Statute

Section 10.1 would amend the Habitual misdemeanor assault statute by:

- Reducing the number of necessary prior convictions from five to two;
- Allowing any prior assault conviction (whether misdemeanor or felony) to count as a prior conviction, with the earlier conviction no more than 15 years prior to the current violation;
- Require that the assault involved physical injury to the victim; and
- Providing that a conviction of the statutory offense could not be used as a prior felony conviction for any other habitual offense statute.

Currently, an offender must have five prior misdemeanor convictions, two of which are assault convictions, to qualify as a habitual misdemeanor assault offender on a third assault conviction.

Part XI – Domestic Violence Offense Tracking

Section 11.1 would add a new provision to provide for reporting offenses involving domestic violence. In cases involving assault or communicating a threat, the judge would determine whether there was a personal relationship between the offender and the victim. If so, there would be an annotation on the judgment to reflect that the case involved domestic violence. The clerk of court would be required to make the appropriate entry into the offender's official criminal record to reflect that the offense involved domestic violence.

- The offender would have to be in a personal relationship, as defined by statute.
- The entry would be made in all cases (including a murder), where the underlying conduct was assaultive in nature.
- Any person making a lawful inquiry into a person's criminal history would be able to determine that the person had been convicted of an offense involving domestic violence.

If the judge determines that there was a personal relationship, then the judge is also required to determine whether the defendant should be required to comply with any special conditions of probation. Due to an ambiguity in the statutes, the new provision makes clear that the judge may (but is not required to) sentence the defendant to house arrest with electronic monitoring.

Background: Federal law prohibits persons convicted of a misdemeanor involving domestic violence from possessing a firearm. Currently, there is no consistent and uniform method to insure that convictions involving domestic violence are reflected in a person's official criminal record. In addition, although "assault on a female" is generally used in domestic violence cases, there is no accurate method for collecting accurate data on DV cases. Consequently, there has been some difficulty in providing information to assist policymakers in determining whether any changes in the judicial response to DV crimes are needed.

Part XII – Study of Misdemeanor Offense Classifications

Section 12.1 requires the North Carolina Sentencing and Policy Advisory Commission to study the classification of misdemeanor offenses, and to develop a system for classifying misdemeanor offenses based upon their severity. The Commission is required to examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. This section includes a finding by the General Assembly that the classification of assault offenses that cause serious injury as misdemeanors is inconsistent with the Commission's own classification of felonies based upon harm. The Commission is required to report to the 2005 General Assembly, 2005 Regular Session, with its findings and recommendations (status and any completed recommendations). A final report is due to the 2005 General Assembly, 2006 Regular Session.

Background: The Commission has adopted formal criteria for the classification of felony offenses, but did not create any classification criteria for misdemeanors. Although the felony classification criteria includes "serious injury" to the person, the current offense of assault causing serious injury is a misdemeanor.

Part XIII – Warrantless Arrest for Violation of Pretrial Release Conditions

Section 13.1 amends the law to provide that if a law enforcement officer has probable cause to believe that a person has violated a condition of a pretrial release order in a domestic violence case, then the officer may arrest the defendant without a warrant. The arrest must be based upon a violation of one of the following provisions of a release order issued under G.S. 15A-534.1(2):

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

c. That the defendant refrain from removing, damaging or injuring specifically identified property;

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

A pretrial release order in a domestic violence case may be entered where the defendant has been arrested for assault on, communicating a threat to, domestic criminal trespass, or committing various felonies upon a spouse or former spouse, or upon someone with whom the defendant has lived as if married.

Background: Current law allows an officer to arrest a defendant without a warrant if the officer has probable cause to believe that the defendant has violated a specified condition of a protective order entered under G.S. 50B-4.1 (i.e., threatened, abusing or following the victim; harassing the victim; interfering with the victim; or going to the residence or household of the victim). A person may seek a protective order under G.S. 50B without seeking the arrest of the person alleged to have committed an act of domestic violence.

Part XIV – Conform State Firearms Law to Federal Law

Section 14.1 amends North Carolina law to provide that a person who is a convicted felon may not possess any firearm. A "firearm" would be defined to parallel the definition of "firearm" under federal law. Current State law allows a convicted felon to won guns with a barrel length that is 18 inches or longer, or an overall length of 26 inches or more. It also allows convicted felons to possess any firearm in their home or "place of business".

Background: Under federal law, any person convicted of a felony in North Carolina would be prohibited from owning any type of firearm.

Part XV – Specifically Allow Cross Warrants

Section 15.1 clarifies that a judicial official cannot refuse to issue a warrant solely because a warrant had been issued for the arrest of another person in the same case.

Background: Information was provided to the Criminal Law issues subcommittee that magistrates were failing to make individual probable cause determinations [as a "policy"] if a warrant had previously been issued in the same matter.

Part XVI – Clarify Nurse's Privilege

Section 16.1 clarifies that if a written or printed record (as opposed to live testimony) is otherwise admissible (e.g., not excluded by the hearsay rule), then it may be entered into evidence. The nurse's privilege applies to any information that the nurse acquired that was necessary to render professional

nursing services. If the information was not necessary to the rendering of services, then the nurse may be required to disclose the information. A presiding judge may compel the disclosure of evidence if the judge believes that its disclosure is necessary for a proper administration of justice.

Background: Generally, the information may be introduced by the custodian of the records of the health care facility where the records are located.

Section 16.2 makes a technical change to add the nurse's privilege (passed last Session), in the provision that excludes evidence of child abuse from the physician-patient privilege in juvenile proceedings.

Part XVII – Temporary Child Custody in Domestic Violence Hearings

Sections 17.1 through 17.6 remove the current limitations under which courts may address temporary custody under Chapter 50B.

Custody under Chapter 50B at the ex parte stage: These sections would amend the law regarding ex parte custody orders by allowing the court to enter orders at that stage if the child is exposed to a substantial risk of physical or emotional injury (not "bodily" injury) or sexual abuse. This would give the court more discretion in deciding when a child is at risk.

The changes would also require the court, if requested by the aggrieved party, to consider whether the other party should stay away from the child, or return the child to, or not remove the child from, the physical case of a parent or person in loco parentis. If the court decides the other party should have contact with the child, it would be required to issue an order specifying the terms of contact to protect the safety of the child and the aggrieved party.

The same provisions would apply to an authorized magistrate issuing an ex parte protective order.

Custody under Chapter 50B at a hearing following notice to the other party: These sections would create new requirements for the court when deciding whether to award temporary custody and visitation rights at a hearing under Chapter 50B after the other party has received notice or service of process. Rather than being discretionary, the court would be required to consider the issue of custody upon the request of either party. However, it would ultimately be within the discretion of the court to decide whether to actually grant an award of custody.

In determining whether custody and visitation should be awarded, the court would be required to consider the following listed factors:

- Whether the child was exposed to a substantial risk of physical or emotional injury or sexual abuse.
- Whether the child was present during acts of domestic violence.
- Whether a weapon was used or threatened to be used during any act of domestic violence.
- Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the child.
- Whether a party placed the aggrieved party or the child in reasonable fear of imminent serious bodily injury.
- Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.
- Whether there is a pattern of abuse against an aggrieved party or the child.

- Whether a party has abused or endangered the child during visitation.
- Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.
- Whether a party has improperly concealed or detained the child.
- Whether a party has otherwise acted in a manner that is not in the best interest of the child.

If the court decides to award temporary custody, then the court would also be required to consider visitation. If ordering visitation, the court must provide for the safety and well being of both the child and the aggrieved party. The order must give specific parameters or conditions for the visitation, and may include any of the following:

- Exchange of the child in a protected setting.
- Supervised visitation.
- Treatment for the noncustodial parent.
- Restricting either parent from possessing or consuming controlled substances.
- Requiring the noncustodial parent to pay for supervised visitation.
- Prohibiting overnight visitation.
- Requiring a bond for the return of the child.
- Ordering an investigation or appointment of GAL for the child.
- Any other conditions deemed necessary.

Duration of orders: The duration of temporary custody orders entered under Chapter 50B are limited to a maximum of one year. While a protective order can generally be renewed indefinitely, any provisions awarding custody would not be eligible for renewal beyond the initial one year period. In addition, any subsequent custody order entered under Chapter 50 would supersede a temporary order entered under Chapter 50B.

Custody under Chapter 50: G.S. 50-13.2 is amended so that the new provisions set out in Chapter 50B, requiring courts to consider specific listed factors, would apply in all custody cases where the court finds that domestic violence has occurred.

Part XVIII – Prohibit Employment Discrimination Against Domestic Violence Victims

Sections 18.1 and 18.2 add a section to Chapter 50B prohibiting employers from discriminating against an employee for taking reasonable time off to appear in court when he or she is seeking relief under Chapter 50B. The employee would be required to notify the employer of the reason for the absence and supply documentation to the employer, if requested, to prove that he or she did have to miss work to appear in court.

This provision would be enforced by the Commissioner of Labor pursuant to Article 21 of Chapter 95 (Retaliatory Employment Discrimination). Under Article 21, if an employee feels that a violation has occurred, he or she may file a complaint with the Commissioner, who will initiate an investigation. If the Commissioner determines that there is reason to believe the allegations are true, the Commissioner may try to resolve the alleged violation through informal methods. If the Commissioner is unsuccessful, he or she must file a civil action on behalf of the employee or issue a right to sue letter to the employee

enabling the employee to bring a civil action. The court may award any or all of the following types of relief:

- An injunction to enjoin continued violation.
- Reinstatement of the employee.
- Reinstatement of full fringe benefits and seniority rights.
- Compensation for lost wages, lost benefits, and other economic losses. (If the court finds that the violation was willful, the court shall treble the amount of damages awarded.)

Part XIX – Privacy for 50B Intake

Section 19.1 requires the clerk of superior court, whenever feasible, to provide a private area for 50B complainants to fill out forms and make inquiries.

Part XX – Training for Judges and Court Personnel

Section 19.1 requests the North Carolina Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

Section 19.2 directs the Administrative Office of the Courts to study the issue of training for court personnel in the area of domestic violence, and to report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

EFFECTIVE DATES:

Each numbered Part of the bill contains the effective date for its own provisions.

H1354-smrk-04

APPENDIX

PARTS X AND XI– HABITUAL MISDEMEANOR ASSAULT AND STRANGULATION CAUSING PHYSICAL INJURY

EXAMPLE CASES

EXAMPLE 1: Defendant assaults his girlfriend and causes physical injury. The defendant and girlfriend live together.

Prior Record: (1) Assault Inflicting Serious Injury (Class A1, one point)
(2) Assault on a Female (Class A1, one point)

	Charge	Elements	Classification	Possible Sentence
Current Law	Assault on a Female		A1 Misdemeanor	1-75 days C/I/A
Current Law	Simple Assault		Class 2 Mis.	1-45 days C/I
Bill	Habitual Misdemeanor Assault	Physical Injury	Class H felony (PRL I)*	Min. range: 6-8 months, C/I/A (Agg. Range)

* If the defendant had any other offenses with points, he would move up from PRL I.

EXAMPLE 2: Husband assaults wife in their home. He causes injury by strangulation.

Prior Record: (1) Simple Assault (Class 2 Misdemeanor, No points).

Current Law	Assault with deadly weapon with intent to kill and causing serious injury	1- Serious Injury 2- Intent to Kill 3 - Hands as "deadly weapon"	Class C felony	Min. range: 58-73 months Active
Current Law	Assault with a deadly weapon causing serious injury	1- Serious Injury 2- Hands as "deadly weapon"	Class E felony	Min. range: 20-25 months I/A
Current Law	Assault with a deadly weapon with intent to kill	1-Intent to kill 2- Hands as "deadly weapon"	Class E felony	Min. range: 20-25 months I/A
Bill	Physical Injury by Strangulation	1- Physical injury	Class H felony	Min. range: 6-8 months* C/I/A (Agg. Range).
Current Law	Assault on a Female		A1 Misdemeanor	1-75 days C/I/A
Current Law	Simple Assault		Class 2 Mis.	1-45 days C/I

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

Rep. Wilma Sherrill
Rep. Marian McLawhorn

THE FOLLOWING WORKED WITH THE COMMITTEE AND PROVIDED VALUABLE INPUT AND RECOMMENDATIONS.

ADMINISTRATIVE OFFICE OF COURT
Rick Kane: (919) 715-4870

CONFERENCE OF DISTRICT COURT JUDGES
Judge Robert Rader: (Wake County): (919) 755-4101 office number (919) 835-3225 direct line

DEPARTMENT OF HEATH AND HUMAN SERVICES
- **DIVISION OF INJURY AND VIOLENCE PREVENTION**
- **DIVISION OF SOCIAL SERVICES**
  Rob Lamme: (919) 733-4534

GOVERNORS CRIME COMMISSION
Barry Bryant: (919) 733-4565

LEGAL AID OF NORTH CAROLINA (DOMESTIC VIOLENCE INITIATIVE)
TeAndra Miller: (919) 856-2142

LEGAL AID SOCIETY OF NORTHWEST NORTH CAROLINA
Andrea Kurtz: (336) 725-9166

NORTH CAROLINA BAR ASSOCIATION
Jonathan McGirt: (919) 677-0561

NORTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE
Beth Froeling: (919) 956-9124

NORTH CAROLINA COALITION AGAINST SEXUAL ASSAULT
Monika Johnson Hostler: (919) 431-0995

NORTH CAROLINA CONFERENCE OF DA'S
Peg Dorer: (919) 733-3484

NORTH CAROLINA COUNCIL FOR WOMEN

Leslie Starsoneck; (919) 733-2455

NORTH CAROLINA DEPARTMENT OF CORRECTION
Tracy Little: (919) 716-3711
Dan Steineke: (919) 716-3709

NORTH CAROLINA DEPARTMENT OF JUSTICE: ATTORNEY GENERALS OFFICE
Will Polk: (919) 716-6780

NORTH CAROLINA DOMESTIC VIOLENCE COMMISSION
Leslie Starsoneck: (919) 733-2455

NORTH CAROLINA FAMILY PRACTICE COURT
John Koontz:

NORTH CAROLINA LEGAL SERVICES PLANNING COUNCIL
Jim Barrett: (828) 253-0406

NORTH CAROLINA NURSES ASSOCIATION
Joanne Stevens: (919) 816-9205

NORTH CAROLINA SENTENCING COMMISSION
Susan Katzenelson: (919) 789-3684

NORTH CAROLINA SHERIFF ASSOCIATION
Eddie Caldwell: (919) 831-1801

NORTH CAROLINA STATE BAR
Alice Mine: (919) 828-4620

OFFICE OF ADMINISTRATIVE HEARING
Jo McCants: (919) 715-4864

PITT COUNTY SHERIFF'S DEPARTMENT
John Guard: (252) 830-4687

PISGAH LEGAL SERVICES
Jim Barrett: (828) 253-0406

State of North Carolina
Roy Cooper
Attorney General

June 14, 2004

The Hon. Wilma M. Sherrill
The Hon. Marian N. McLawhorn
NC House of Representatives
Legislative Building
Raleigh, NC 27601

VIA HAND DELIVERY

Dear Rep. Sherrill and Rep. McLawhorn:

I write to commend your excellent work to combat domestic violence in North Carolina through House Bill 1354. This bill lays out a comprehensive strategy to prosecute abusers and to prevent violence from happening, and it deserves adoption by the North Carolina General Assembly.

With the tougher penalties, better court tracking and greater awareness that the initiative provides, families and children will be safer in North Carolina. Here at the Department of Justice, we already are implementing new recommendations regarding law enforcement training. In addition, our Address Confidentiality Program, which you helped us establish last year, already has 145 participants who are seeking to avoid abusers. We have more than 170 application assistants in community-based help programs across the state who help us enroll participants.

Thank you for the opportunity to work with you and the House Select Committee on Domestic Violence on this bill, and we look forward to continuing this critical initiative. With warm regards, I am

Very truly yours,

Roy Cooper
Attorney General

Department of Justice, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001
Phone: (919) 716-6400 Fax: (919) 716-0803

ADMINISTRATIVE OFFICE OF THE COURTS

P.O. BOX 2448 ♦ RALEIGH, NC 27602
PHONE: (919) 733-7107

JOHN M. KENNEDY
DIRECTOR

GREGG C STAHL
SENIOR DEPUTY DIRECTOR

June 16, 2004

The Honorable Marian N. McLawhorn
The Honorable Wilma M. Sherrill
House of Representatives
Raleigh, North Carolina

Dear Madam Chairs,

On behalf of the Judicial Branch of government, I would like to commend the work of you and your Select Committee on Domestic Violence. Domestic violence is a very real problem in North Carolina as evidenced by recent high profile cases in Wilmington last week and your committee was very diligent in its efforts to recommend real, workable solutions to this problem.

I would particularly like to commend you for recognizing the costs involved on placing greater emphasis on these cases and providing for the necessary allocation of resources to the Judicial Branch to support the work that needs to be done.

Good luck with you efforts at reforming the domestic violence statutes and processes in order to better address the problem.

Sincerely,

John Kennedy
Director
Administrative Office of the Courts

Conference of District Attorneys

NORTH CAROLINA

Peg Dorer
Director

P.O. Box 25546
Raleigh, NC 27611

919.733.3484
919.715.0138

June 17, 2004

The Honorable Wilma M. Sherrill
North Carolina General Assembly
302D Legislative Office Building
Raleigh, NC 27603-5925

Re: House Bill 1354 – *Strengthen Domestic Violence Laws*

Dear Representative Sherrill:

I am directing this letter to you on behalf of the North Carolina Conference of District Attorneys in my capacity as President of the Conference. I hope you will note, and advise the House membership of the Conference's strong support of House Bill 1354.

We followed the progress of this bill with great interest, and have provided several District Attorneys to testify at committee hearings regarding the same. The results of those hearings have produced a fine bill. We are especially pleased with the portions of the bill which pertain to offense definitions and increased penalties and punishments.

We are pleased that the House leadership has directed their attention to this most serious of social and criminal issues. As you well know, domestic violence cases are time and labor intensive. House Bill 1354 provides us with very important long-term tools necessary for effectively prosecuting and adjudicating these cases. As we increasingly focus on the problems associated with domestic violence through the application of the provisions of this new bill, we hope the legislature will continue to improve resource availability and allocation.

Thank you for your work and attention on this most important issue. The Conference of District Attorneys looks forward to working with you on future endeavors. Please call upon us at anytime if we can provide assistance concerning this or any other matter.

I am as always very truly yours,

Jeff Hunt
President

EXECUTIVE COMMITTEE

Jeff Hunt
President

Frank R. Parrish
President Elect

C. Branson Vickory, III
Vice President

Luther Johnson Britt, III
Past President

W. Clark Everett

R. Stuart Albright

Garry Frank

Tom Horner

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

State of North Carolina
Office of the Lieutenant Governor

BEVERLY EAVES PERDUE
LIEUTENANT GOVERNOR

310 NORTH BLOUNT STREET
20401 MAIL SERVICE CENTER
RALEIGH, NC 27699-0401

TELEPHONE: (919) 733-7350
FAX: (919) 733-6595
e-mail: bperdue@ncmail.net

June 7, 2004

The Honorable Wilma Sherrill
302D Legislative Office Building
Raleigh, North Carolina 27603-5925

Dear Representative Sherrill,

I am writing in support of House Bill 1354 "Strengthen Domestic Violence Laws". It is clear that the House Select Committee on Domestic Violence and the Domestic Violence Commission worked closely with one another in the development of this important legislation.

The establishment of an offender treatment program could be the most important part of this legislation. Treatment is essential in reducing domestic violence. Without treatment, the cycle cannot be broken.

Please let me know what I can do to assist you in the passage of this important legislation.

Sincerely,

Bev

Bev Perdue

BEP:/tj

Rosa Kelley (Rep. Sherrill)

From: Robert Riddle [bob@rriddlelaw.com]
Sent: Tuesday, June 15, 2004 9:30 AM
To: Rep. Wilma Sherrill
Cc: George Hauser (E-mail)
Subject: Domestic Violence

Dear Wilma:

Thanks for the good work you are doing on the domestic violence issue. I can see why your rating are so spectacular. I am serving on the N.C.Legal Services Board and of course they are very intersted in this legislation and appreciate your leadership.

Best regards,

Robert E. Riddle

NORTH CAROLINA MEDICAL SOCIETY
Established 1849

June 14, 2004

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
Legislative Office Building
Raleigh, NC 27603-5925

Dear Representative Sherrill:

We would like to commend you on your efforts during the interim as Co-chair of the House Select Committee on Domestic Violence and for bringing forth legislation to address the issue through meaningful reform.

The North Carolina Medical Society supports House Bill 1354 - STRENGTHEN DOMESTIC VIOLENCE LAWS and believes that its enactment will truly make a difference in preventing abuse through education, providing training for law enforcement and school personnel and increasing the penalties for offenders.

As physicians, the physical safety and well-being of our patients is our primary concern. We believe that domestic violence not only harms individuals, but also impacts the family as well as the community. Strengthening the laws associated with such crimes is long overdue.

Again, we applaud your efforts in this area, and you, for championing this cause.

Sincerely,

Lawrence M. Cutchin, M.D.

Lawrence M. Cutchin, MD
President

P.O. Box 27167 • 222 N. Person St. • Raleigh, NC 27611 • (919) 833-3836 or (800) 722-1350 • Fax (919) 833-2023 • www.ncmedsoc.org

North Carolina
Department of Administration

Michael F. Easley, Governor
Gwynn T. Swinson, Secretary

N.C. Council for Women/Domestic Violence Commission
Leslie Starsoneck, Executive Director

To: Representative Wilma Sherrill

From: Deborah Weissman, Chair, Domestic Violence Commission
Leslie Starsoneck, Executive Director, Council for Women & Domestic Violence Commission

Date: June 17, 2004

Re: HB 1354

We are writing to express our strong support for the passage of this important omnibus bill on domestic violence. The Commission has been pleased to be able to provide input and consultation during the time this bill was being crafted. The legislation is well researched, comprehensive and reaches into the many complex dimensions of domestic violence. It is also very balanced in its approach. We applaud your efforts as co-chair of this effective House Select Committee. We have consulted national experts in the field of domestic violence who have noted their admiration for the quality of this legislation and suggested that North Carolina will become one of the country's leaders in responding to this epidemic upon passage of this important legislation. Thank you, as always, for your leadership on this important issue.

For your reference, we have attached the current list of members of the Domestic Violence Commission. As a member, you are aware that the strength of the Commission comes largely from the diversity of its membership. We are pleased to have contributed to this legislation.

Mailing Address:
1320 Mail Service Center
Raleigh, N.C. 27699-1320

Telephone (919) 733-2455
Fax (919) 733-2464
State Courier #58-82-06

Location:
526 North Wilmington St.
Raleigh, North Carolina

An Equal Opportunity/Affirmative Action Employer



NORTH CAROLINA
COALITION
AGAINST DOMESTIC VIOLENCE

June 11, 2004

Re: **House Bill 1354: Strengthen Domestic Violence Laws**

To Whom It May Concern:

The North Carolina Coalition Against Domestic Violence (NCCADV) strongly supports House Bill 1354: Strengthen Domestic Violence Laws. On behalf of the 90 local domestic violence programs across the state and the victims they serve, we respectfully request that you support this important legislation. The recommendations that are included in House Bill 1354 are thoughtful, comprehensive, and address critical issues that impact the lives of victims of domestic violence and their children every day. These recommendations will significantly improve our state's response to victims of domestic violence, which will ultimately save lives.

Thank you for your consideration. Please let us know if we can be of assistance to you or provide you with further information. We appreciate the dedication of committed legislators like you who strive to improve the safety and well-being of our state's citizens.

Sincerely,

MB Loucks-Sorrell

Mary Beth Loucks-Sorrell
Executive Director

Beth Froehling

Beth Froehling
Public Policy Specialist

115 MARKET STREET, SUITE 400, DURHAM NC 27701 | 919.956.9124 | FAX 919.682.1449 | WWW.NCCADV.ORG

Legal Aid of North Carolina, Inc.

Administrative Office

224 South Dawson Street • Post Office Box 26087 • Raleigh, North Carolina 27611
919/856-2564 • Fax 919/856-2120

Serving low-income clients in all 100 counties of North Carolina

George R. Hausen, Jr., Esq.
Executive Director

www.legalaidnc.org

June 14, 2004

North Carolina General Assembly
Raleigh, North Carolina

Re: House Bill 1354

TO WHOM IT MAY CONCERN:

The Board and staff of Legal Aid of North Carolina support HB 1354, which will significantly strengthen North Carolina's domestic violence laws.

Legal Aid of North Carolina works directly with over sixty domestic violence shelters around the state and counsels and represents thousands of women in court proceedings all across the state as they attempt to extricate themselves from abusive situations. Recent statistics indicate that approximately 45,000 cases of domestic violence occur each year in North Carolina. HB 1354, in our opinion, will not only significantly reduce the incidence of abuse but it will allow the victims of domestic violence to more easily escape abusive situations.

Legal Aid of North Carolina is a nonprofit, 501(c)(3), organization that assists low and moderate income people across the state who face loss of their housing, loss of their public benefits, have been scammed by unscrupulous business practices, or are threatened by domestic violence. We have 25 offices around the state and last year we assisted over 20,000 people with our advocacy and our community education work. In addition to our statewide board, we have Local Advisory Councils, comprising community leaders from the private sector as well as leaders from the bench and bar, in each of our locales.

We urge you to support this important legislation.

If you have questions about our domestic violence work or any of our other projects, please contact me directly at (919)856-2130 or at georgeh@legalaidnc.org. On behalf of our Board and Council members, thank you very much for consideration of this matter.

Sincerely,

George R. Hausen, Jr.
Executive Director

LSC

North Carolina Coalition Against Sexual Assault

17 June 2004

To Whom It May Concern:

The North Carolina Coalition Against Sexual Assault (NCCASA) has participated and provided feedback to the House Select Committee on Domestic Violence since its first meeting. After many subcommittee and full committee meetings we are pleased with the outcome of House Bill 1354. NCCASA's Board of Directors has included support of House Bill 1354 on our Short Session Legislative Agenda.

As sexual assault, stalking and domestic violence advocates we appreciate the hard work and commitment of the House Select Committee. The effort they have put forth has been inclusive of the people in the trenches and survivors, thus the bill speaks to the needs of those who will be impacted the most- victims and survivors.

Regards,

Monika Johnson-Hostler
Executive Director

NCCASA, 4426 Louisburg Road, Suite 100, Raleigh, NC 27616
Phone: (919) 431-0995 or (888) 737-CASA Fax: (919) 431-0996
Email: nccasa@nccasa.org Website: www.nccasa.org

North Carolina Department of Correction
214 West Jones Street • 4201 MSC • Raleigh, North Carolina 27699-4201

Michael F. Easley
Governor

Theodis Beck
Secretary

June 21, 2004

TO: WHOM IT MAY CONCERN

FROM: Theodis Beck Theodis Beck

RE: House Bill 1354

The North Carolina Department of Correction wishes to express its appreciation to the North Carolina House of Representatives for allowing this agency to have input and the opportunity to work with the committee in addressing this very important issue of domestic violence.

We wish the General Assembly much success in eradicating this very serious problem in the state of North Carolina.

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

HAFER & CALDWELL, P.A.
ATTORNEYS AT LAW

EDMOND W. CALDWELL, JR.
COLLEEN KOCHANEK

F. EUGENE HAFER
OF COUNSEL

POST OFFICE BOX 27484
RALEIGH, NORTH CAROLINA 27611-7484

www.raleighnclaw.com

STREET ADDRESS:
225 HILLSBOROUGH STREET
HILLSBOROUGH PLACE, SUITE 120
RALEIGH, NC 27603

TELEPHONE (919) 831-1801
FAX (919) 831-1805

MEMORANDUM

TO: House Select Committee on Domestic Violence

FROM: Eddie Caldwell, Legislative Counsel
North Carolina Sheriffs' Association

DATE: June 18, 2004

RE: House Bill 1354, Strengthen Domestic Violence Laws

Thank you for your efforts to address many important criminal justice issues regarding domestic violence. The North Carolina Sheriffs' Association supports your efforts as outlined in House Bill 1354 and looks forward to working with you on this important legislation as it moves through the General Assembly.

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1354

Short Title:	Strengthen Domestic Violence Laws.	(Public)
Sponsors:	Representatives McLawhorn, Sherrill (Primary Sponsors); Adams, Alexander, L. Allen, Bordsen, Bowie, Carney, Coates, Crawford, Cunningham, Dickson, Farmer-Butterfield, Fisher, Frye, Gibson, Glazier, Goforth, Howard, Insko, Jeffus, Justice, Luebke, McAllister, Moore, Parmon, Pate, Rapp, Rayfield, Ross, Stam, Stiller, Wainwright, Warren, Weiss, and K. Williams.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS, AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT

SECTION 1.1. G.S. 15A-1343 reads as rewritten:

"**§ 15A-1343. Conditions of probation.**

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises

while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

~~(9a) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) the program is approved by the Domestic Violence Commission.~~

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(b3) Screening and Assessing for Chemical Dependency. – A defendant ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART) operated by the Department of Correction must undergo a screening to determine chemical dependency. If the screening indicates the defendant is chemically dependent, the court shall order an assessment to determine the appropriate level of treatment. The assessment may be conducted either before or after the court imposes the condition, but participation in the program shall be based on the results of the assessment.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other

organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done.

(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs to be repaid and the method of payment.

(f) Repealed by Session Laws 1983, c. 561, s. 5.

(g) Probation Officer May Determine Payment Schedules. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action."

SECTION 1.2. G.S. 143B-262 is amended by adding a new subsection to read:

"(e) The Department, in consultation with the Domestic Violence Commission, and in accordance with established best practices, shall establish a domestic violence treatment program for offenders sentenced to a term of imprisonment in the custody of the Department and whose official record includes a finding by the court that the offender committed acts of domestic violence.

The Department shall ensure that inmates, whose record includes a finding by the court that the offender committed acts of domestic violence, complete the domestic violence treatment program prior to the completion of the period of incarceration, unless other requirements, deemed critical by the Department, prevent program completion. In the event an inmate does not complete the program during the period of incarceration, the Department shall document, in the inmate's official record, specific reasons why that particular inmate did not or was not able to complete the program."

SECTION 1.3. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART II. DOMESTIC VIOLENCE TRAINING FOR LAW ENFORCEMENT

SECTION 2.1. G.S. 17C-6(a)(2) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position. The standards for entry level employment shall include at least 16 hours of education and training in response to, and investigation of, domestic violence cases. The training shall include investigation for evidence based prosecutions."

SECTION 2.2. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence education and training required by Section 2.1 of this part is incorporated into all Basic Law Enforcement Training (BLET) courses as soon as practicable. However, the domestic violence education and training shall be part of the required BLET curriculum no later than January 1, 2005.

SECTION 2.3. G.S. 17C-6(a)(14) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards shall include a minimum of two hours, every two years, of training in response to, and investigation of, domestic violence cases. The training shall include investigation for evidence based prosecutions."

SECTION 2.4. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence in-service training required by Section 2.3 of this part is available no later than January 1, 2005. Criminal Justice Officers already certified prior to January 1, 2005, shall have until December 31, 2006, to complete the initial requirement for domestic violence in-service training required by Section 2.3 of this part.

SECTION 2.5. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(15) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (14) of this subsection."

SECTION 2.6. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the standards and training required for certification under Section 2.5 of this part are implemented no later than January 1, 2005.

SECTION 2.7. G.S. 17E-4(a)(2) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

...

(2) Establish minimum educational and training standards that may be met in order to qualify for entry level employment as an officer in temporary or probationary status or in a permanent ~~position;~~ position. The standards for entry level employment of officers shall include at least 16 hours of training in response to, and investigation of, domestic violence cases. The training shall include investigation for evidence based prosecutions. For purposes of the domestic violence training requirement, the term 'officers' shall include justice officers as defined in G.S. 17E-2(3)a., except that the term shall not include 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

SECTION 2.8. The North Carolina Sheriffs' Education and Training Standards Commission shall ensure that the domestic violence education and training required by Section 2.7 of this part is incorporated into all Basic Law Enforcement Training (BLET) courses as soon as practicable. However, the domestic violence education and training shall be part of the required BLET curriculum no later than January 1, 2005.

SECTION 2.9. G.S. 17E-4(a)(10) reads as rewritten:

"(10) Enter into contracts incident to the administration of its authority pursuant to this ~~Chapter.~~Chapter;".

SECTION 2.10. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"(11) Establish minimum standards for in-service training for justice officers. In-service training standards shall include a minimum of two hours, every two years, of training in response to, and investigation of, domestic violence cases. The training shall include investigation for evidence based prosecutions. For purposes of the domestic violence training requirement, the term 'justice officer' shall include those defined in G.S. 17E-2(3)a., except that the term shall not include 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

SECTION 2.11. The North Carolina Sheriffs' Education and Training Standards Commission shall ensure that the domestic violence in-service training required by Section 2.9 of this part is available no later than January 1, 2005. Justice Officers already certified prior to January 1, 2005, shall have until December 31, 2006 to complete the initial requirement for domestic violence in-service training required by Section 2.9 of this part.

SECTION 2.12. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"(12) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (11) of this subsection."

SECTION 2.13. The North Carolina Sheriffs' Education and Training Standards Commission shall ensure that the standards and training required for

certification under Section 2.11 of this part are implemented no later than January 1, 2005.

SECTION 2.14. This part is effective when it becomes law.

PART III. STUDY OF ANTI-VIOLENCE EDUCATION IN SCHOOLS AND TRAINING FOR SCHOOL PERSONNEL

SECTION 3.1. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study the issue of anti-violence programs in the schools. In studying this issue, the Department shall answer the following:

(1) How are schools currently addressing anti-violence in their curriculum;
(2) How do current curriculums vary at each grade level, K-12;
(3) Do currently used curriculums address physical violence and mental or verbal abuse, particularly instances of domestic and relationship violence;
(4) Should the State require every public school to have an anti-violence program of instruction incorporated into the curriculum;
(5) Should an anti-violence program be required at every grade level;
(6) What would be an appropriate curriculum for each grade level;
(7) What minimum requirements should be present in an appropriate curriculum to ensure that the curriculum addresses physical violence, mental or verbal abuse, and domestic and relationship violence;
(8) Should the State implement a particular anti-violence curriculum or allow individual schools to choose an appropriate curriculum from an approved list;
(9) What is the fiscal impact of implementing an anti-violence program for all schools, including additional staffing needs, if any.

In studying this issue, the Department shall examine some of the anti-violence programs that are in use through out the country. In addition to any other specific programs examined, the Department shall review in detail the "Second Step" program developed by the Committee for Children.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 3.2. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study training for school personnel dealing with students who are victims of physical violence and mental or verbal abuse, particularly instances of domestic violence and relationship violence. In studying this issue, the Department shall answer the following:

(1) What type of training is currently available and/or required for school personnel.
(2) Should training be required for school personnel.

(3) If training should be required, which school personnel should be required to receive the training.
(4) What type of training should be required.
(5) What is the fiscal impact of requiring school personnel to receive such training.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 3.3. This part is effective when it becomes law.

PART IV. LEGAL SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE

SECTION 4.1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 37B.

"Domestic Violence Victim Assistance Act.

"**§ 7A-474.6. Legislative findings and purpose.**

The General Assembly of North Carolina declares it to be its purpose to provide access to legal representation for domestic violence victims in certain kinds of civil matters. The General Assembly finds that such representation can best be provided in an efficient, effective, and economic manner through established legal services programs in this State.

"**§ 7A-474.7. Definitions.**

The following definitions shall apply throughout this Article, unless the context otherwise requires:

(1) "Domestic violence victim" means a resident of North Carolina that has been subjected to acts of domestic violence as defined in G.S. 50B-1. A resident is not required to seek a protective order under Chapter 50B of the General Statutes to qualify as a domestic violence victim under this Article.

(2) "Legal assistance" means the provision of any legal services, as defined by Chapter 84 of the General Statutes, consistent with this Article. Provided, that all legal services provided hereunder shall be performed consistently with the Rules of Professional Conduct promulgated by the North Carolina State Bar. Provided, further, that no funds appropriated under this Article shall be used for lobbying to influence the passage or defeat of any legislation before any municipal, county, state, or national legislative body.

(3) "Established legal services program" means the following not-for-profit corporations using State funds to serve the counties listed: Legal Aid Society of Northwest North Carolina, serving Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties; Pisgah Legal Services, serving Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; and Legal Aid of North Carolina; or any successor entity or entities of the named organizations, or, should any

of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area.

"**§ 7A-474.8. Eligible activities and limitations.**

(a) Eligible Activities. – Funds appropriated under this Article shall be used only for the following purposes:

(1) To provide legal assistance to domestic violence victims;

(2) To provide education to domestic violence victims regarding their rights and duties under the law;

(3) To involve the private bar in the representation of domestic violence victims pursuant to this Article.

(b) Eligible Cases. – The funds shall be prioritized by each legal services program to serve the greatest number of eligible clients, with emphasis placed on representation of clients needing legal assistance with proceedings pursuant to Chapter 50B of the General Statutes. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Actions for protective orders issued pursuant to Chapter 50B of the General Statutes;

(2) Child custody and visitation issues; and

(3) Legal services which ensure the safety of the client and the client's children.

(c) Limitations. – No funds appropriated under this Article shall be used for any of the following purposes:

(1) To provide legal assistance with respect to any criminal proceeding; or

(2) To provide legal assistance to any prisoner within the North Carolina Department of Correction with regard to the terms of that person's incarceration.

"**§ 7A-474.9. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties, and Legal Aid Society of Northwest North Carolina receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties. Funds shall be allocated to each program based on the counties served by that program using the following formula:

(1) Twenty percent (20%) based on a fixed equal dollar amount for each county;

(2) Eighty percent (80%) based on the rate of civil actions filed pursuant to Chapter 50B of the General Statutes in that county.

The North Carolina State Bar shall not use any of these funds for its administrative costs.

"**§ 7A-474.10. Records and reports.**

The established legal services programs shall keep appropriate records and make periodic reports, as requested, to the North Carolina State Bar. The North Carolina State Bar shall report annually to the General Assembly on the amount of the funds disbursed and the use of the funds by each legal services program receiving funds. The report to the General Assembly shall be made by January 15 of each year beginning January 15, 2006."

SECTION 4.2. G.S. 84-4.1 reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

(a) Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by

any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

(7) A fee in the amount of one hundred dollars ($100.00).

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application.

(b) Fees collected under this section shall be remitted to the North Carolina State Bar for the provision of services described in G.S. 7A-474.9."

SECTION 4.3. Section 4.1 of this part is effective when it becomes law. Section 4.2 of this part becomes effective July 1, 2004, and applies to all motions filed on or after that date. The remainder of this part is effective when it becomes law.

PART V. DOMESTIC VIOLENCE OFFENDER FEE AND ADDITIONAL FUNDING FOR VICTIM SERVICES

SECTION 5.1. G.S. 50B-3 is amended by adding a new subsection to read:

"(a1) If, upon completion of the 10-day hearing, the court issues a protective order, the court shall require the defendant to pay a fee in the amount of one hundred dollars ($100.00). This fee shall be assessed only upon the initial issuance of the order, and not upon any renewal of the same order."

SECTION 5.2. There is appropriated from the General Fund to the Department of Administration, to be credited to the Domestic Violence Center Fund established under G.S. 50B-9, the sum of two million dollars ($2,000,000) for the 2004-2005 fiscal year. It is the intent of the General Assembly that this become a recurring appropriation.

SECTION 5.3. This part becomes effective July 1, 2004. Section 5.1 of this part applies to all orders issued on or after that date.

PART VI. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY TASK FORCE

SECTION 6.1. G.S. 7B-1402 reads as rewritten:

"**§ 7B-1402. Task Force – creation; membership; vacancies.**

(a) There is created the North Carolina Child Fatality Task Force within the Department of Health and Human Services for budgetary purposes only.

(b) The Task Force shall be composed of 35 members, 11 of whom shall be ex officio members, four of whom shall be appointed by the Governor, 10 of whom shall be appointed by the Speaker of the House of Representatives, and 10 of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;

(2) The Attorney General;

(3) The Director of the Division of Social Services;

(4) The Director of the State Bureau of Investigation;

(5) The Director of the Division of Maternal and Child Health of the Department of Health and Human Services;

(6) The Director of the Governor's Youth Advocacy and Involvement Office;
(7) The Superintendent of Public Instruction;
(8) The Chairman of the State Board of Education;
(9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
(10) The Secretary of the Department of Health and Human Services;
(11) The Director of the Administrative Office of the Courts;
(12) A director of a county department of social services, appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
(13) A representative from a Sudden Infant Death Syndrome counseling and education program, appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
(14) A representative from the North Carolina Child Advocacy Institute, appointed by the Governor upon recommendation of the President of the Institute;
(15) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;
(16) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;
(17) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;
(18) A representative from the North Carolina League of Municipalities, appointed by the Speaker of the House of Representatives upon recommendation of the League;
(18a) A representative from the North Carolina Domestic Violence Commission, appointed by the Speaker of the House of Representatives upon recommendation of the Director of the Commission;
(19) ~~Two public members,~~One public member, appointed by the Speaker of the House of Representatives;
(20) A county or municipal law enforcement officer, appointed by the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;
(21) A district attorney, appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;

(22) A representative from the North Carolina Association of County Commissioners, appointed by the President Pro Tempore of the Senate upon recommendation of the Association;

(22a) A representative from the North Carolina Coalition Against Domestic Violence, appointed by the President Pro Tempore of the Senate upon recommendation of the Executive Director of the Coalition;

(23) ~~Two public members,~~One public member, appointed by the President Pro Tempore of the Senate; and

(24) Five members of the Senate, appointed by the President Pro Tempore of the Senate, and five members of the House of Representatives, appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. Terms shall be two years. The members shall elect a chair who shall preside for the duration of the chair's term as member. In the event a vacancy occurs in the chair before the expiration of the chair's term, the members shall elect an acting chair to serve for the remainder of the unexpired term."

SECTION 6.2. The public members serving on the Child Fatality Task Force on the effective date of this act shall complete their current terms. The new appointments contained in Section 1 of this act shall take effect at the end of those terms.

SECTION 6.3. This part is effective when it becomes law.

PART VII. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC VIOLENCE VICTIMS

SECTION 7.1. The Department of Health and Human Services shall study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs. The plan will address providing diagnostic and referral services for any client suspected of having a mental illness or a substance abuse problem. The plan will also address the delivery of appropriate services to clients meeting the target population criteria, as defined in the State Plan developed pursuant to G.S. 122C-102. Services must be best practices, as determined by the Department. The Department will consult various stakeholders in the domestic violence network of organizations. The Department will also consider the delivery of services to children identified through domestic violence programs. The Department shall also consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 7.2. This part is effective when it becomes law.

PART VIII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL REPRESENTATION

SECTION 8.1. The North Carolina State Bar, in cooperation with the North Carolina Bar Association, shall study the issue of providing Continuing Legal Education (CLE) credit to active attorneys for providing pro bono legal representation. The Bar

shall consider what types of pro bono legal representation, if any, should qualify for CLE credit and what administrative requirements would be necessary to provide such credit. The Bar shall specifically look at the possible benefits of providing CLE credit for pro bono legal representation to domestic violence victims. The Bar shall also consider the fiscal impact, if any, of providing the credit.

The Bar shall make a preliminary report to the House Select Committee on Domestic Violence no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 8.2. This part is effective when it becomes law.

PART IX. DOMESTIC RELATIONSHIP AGGRAVATING FACTOR

SECTION 9.1. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
(10) The defendant was armed with or used a deadly weapon at the time of the crime.
(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or ~~confidence~~ confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 9.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART X. CREATE STRANGULATION OFFENSE

SECTION 10.1. G.S. 14-32.4 reads as rewritten:

"**§ 14-32.4. Assault inflicting serious bodily ~~injury.~~injury; strangulation; penalties.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement,

coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony."

SECTION 10.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART XI. AMEND HABITUAL MISDEMEANOR ASSAULT STATUTE

SECTION 11.1. G.S. 14-33.2 reads as rewritten:

"**§ 14-33.2. Habitual misdemeanor assault.**

A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of G.S. 14-33~~(c)~~and causes physical injury, or ~~G.S. 14-34~~ G.S. 14-34, and has two or more prior convictions for either misdemeanor or felony assault. ~~been convicted of five or more prior misdemeanor convictions, two of which were assaults.~~ A conviction under this section shall not be used as a prior conviction for any other habitual offense statute. A person convicted of violating this section is guilty of a Class H felony."

SECTION 11.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this part are not abated or affected by this part, and the statutory provisions that would be applicable but for this part remain applicable to those prosecutions.

PART XII. DOMESTIC VIOLENCE OFFENSE TRACKING

SECTION 12.1. Article 86 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

(a) When a defendant is found guilty of an offense involving assault, or communicating a threat, the presiding judge shall determine whether the defendant and victim had a personal relationship. If the presiding judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate on the form reflecting the judgment that the case involved domestic violence. The Clerk of Court shall insure that the official record of the defendant's conviction includes the court's determination, so that any inquiry into the defendant's criminal record will reflect that the offense involved domestic violence.

(b) If the court determines that there was a personal relationship between the defendant and the victim, and a sentence to community punishment is imposed, the court shall determine whether the defendant shall comply with one or more of the special conditions of probation set forth at G.S. 15A-1343(b1), in addition to any other authorized punishment. Notwithstanding the provisions of G.S. 15A-1340.11(6)c., the court is authorized to require the defendant to comply with the provisions of G.S. 15A-1343(b1)(3c).

(c) The following definitions apply to this section:

(1) "Personal relationship" is as defined in G.S. 50B-1(b).

(2) "An offense involving assault" includes any offense where an assault occurred, whether or not the conviction is for an offense under Article 8 of Chapter 14 of the General Statutes.

(3) "Inquiry" shall include any lawful review of the criminal records of persons convicted of an offense in this State, whether by law enforcement personnel or by private individuals."

SECTION 12.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART XIII. AMEND PROBATION RULES

SECTION 13.1. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

(a) Applicability. – This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. – The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. – It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;

(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;

(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and

(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. – The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension

may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment to any of the following:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Report to the offender's probation officer on a frequency to be determined by the ~~officer; or~~officer.

(3) Submit to substance abuse assessment, monitoring or treatment.

(4) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to intermediate punishment to any of the following:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored ~~electronically;~~electronically.

(3) Submit to substance abuse assessment, monitoring or ~~treatment; or~~treatment.

(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. – For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

SECTION 13.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART XIV. STUDY OF MISDEMEANOR OFFENSE CLASSIFICATIONS

SECTION 14.1. The General Assembly finds that the North Carolina Sentencing and Policy Advisory Commission has adopted formal criteria for classifying felony offenses. The Sentencing Commission has identified three general types of harms: harms to persons (including both physical and mental injury); harms to property; and (3) harms to society. The degrees of harm are divided into three levels:

(1) Injury to person, property, or society;

(2) Significant injury to person, property, or society, and

(3) Serious injury to person, property, or society. The stated purpose of establishing the criteria was "to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future."

In contrast to the felony classification criteria, the Commission did not create classification criteria for misdemeanors. However, the current misdemeanor sentencing laws include an assault offense that has serious injury as an element – even though "serious injury to a person" is a category of harm for felony offense classification. The General Assembly finds that the classification of assault offenses that involve serious injury as misdemeanors is inconsistent with the Sentencing Commission's classification of felonies based on harm.

The General Assembly directs the North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, to study the classification of misdemeanor offenses. In particular, the Commission shall examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. The Commission shall develop a system for classifying misdemeanor offenses on the basis of their severity. The Commission may consider reclassifying existing offenses and creating new offenses in order to insure proportionality and consistency. The Commission shall report its findings and recommendations to the 2005 General Assembly, 2005 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations and proposed legislation. The Commission shall make a final report to the 2005 General Assembly, 2006 Regular Session.

SECTION 14.2. This part is effective when it becomes law.

PART XV. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS

SECTION 15.1. G.S. 15A-401 reads as rewritten:

"§ 15A-401. Arrest by law-enforcement officer.

(a) Arrest by Officer Pursuant to a Warrant. –

(1) Warrant in Possession of Officer. – An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.

(2) Warrant Not in Possession of Officer. – An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.

(b) Arrest by Officer Without a Warrant. –

(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; ~~or~~

e. Has committed a misdemeanor under ~~G.S. 50B-4.1(a).~~G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under G.S. 15A-534.1(2).

(3) Repealed by Session Laws 1991, c. 150.

(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5.

(c) How Arrest Made. –

(1) An arrest is complete when:

a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or

b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.

(2) Upon making an arrest, a law-enforcement officer must:

a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,

b. Inform the arrested person that he is under arrest, and

c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.

(d) Use of Force in Arrest. –

(1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:

a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or

b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:

a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or

c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(e) Entry on Private Premises or Vehicle; Use of Force. –

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the

original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose.

(f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –

(1) A person is not justified in using a deadly weapon or deadly force to resist an arrest by a law-enforcement officer using reasonable force, when the person knows or has reason to know that the officer is a law-enforcement officer and that the offic[illegible] is effecting or attempting to effect an arrest.

(2) The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.

(3) Nothing contained in this subsection (f) shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest. Nothing contained in this subsection (f) shall be construed to bar or limit any civil action arising out of an arrest not authorized by this Article."

SECTION 15.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART XVI. CONFORM STATE FIREARMS LAW TO FEDERAL LAW

SECTION 16.1. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any ~~handgun or other firearm~~ firearm~~with a barrel length of less than 18 inches or an overall length of less than 26 inches,~~ or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer.

Every person violating the provisions of this section shall be punished as a Class G felon.

~~Nothing in this subsection would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business.~~

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefore, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein."

SECTION 16.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutory provisions that would be applicable but for this act remain applicable to those prosecutions.

PART XVII. SPECIFICALLY ALLOW CROSS WARRANTS

SECTION 17.1. G.S. 15A-304 reads as rewritten:

"**§ 15A-304. Warrant for arrest.**

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned

will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

(c) Statement of the Crime. – The warrant must contain a statement of the crime of which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or more of the following:

(1) Affidavit;

(2) Oral testimony under oath or affirmation before the issuing official; or

(3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

If the information is insufficient to show probable cause, the warrant may not be issued. A judicial official shall not refuse to issue a warrant for the arrest of a person solely because a prior warrant has been issued for the arrest of another person involved in the same matter.

(e) Order for Arrest. – The order for arrest must direct that a law-enforcement officer take the defendant into custody and bring him without unnecessary delay before a judicial official to answer to the charges made against him.

(f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued by:

(1) A Justice of the Supreme Court.

(2) A judge of the Court of Appeals.

(3) A judge of the superior court.

(4) A judge of the district court, as provided in G.S. 7A-291.

(5) A clerk, as provided in G.S. 7A-180 and 7A-181.

(6) A magistrate, as provided in G.S. 7A-273."

SECTION 17.2. This part is effective when it becomes law.

PART XVIII. CLARIFY NURSE'S PRIVILEGE

SECTION 18.1. G.S. 8-53.13 reads as rewritten:

"**§ 8-53.13. Nurse privilege.**

No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional nursing services, and which information was necessary to enable that

person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule. Nothing in this section shall preclude the admission of otherwise admissible written or printed medical records in any judicial proceeding."

SECTION 18.2. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child abuse.**

Notwithstanding the provisions of G.S. ~~8-53,~~ 8-53 and 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina."

SECTION 18.3. This part becomes effective December 1, 2004.

PART XIX. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE HEARINGS

SECTION 19.1. G.S. 50-13.2(b) reads as rewritten:

"(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic ~~violence.~~violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2) and (3). ~~Such orders may include a designation of time and place for the exchange of children away from the abused party, the participation of a third party, or supervised visitation.~~ If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child."

SECTION 19.2. G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary ~~orders.~~ orders; temporary custody.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(b) Emergency Relief. – A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c) Ex Parte Orders. – Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts provided, however, that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the court shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the court finds that the order is necessary for the safety of the minor child. If the court determines that the other party may have contact with the minor child or children, the court shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall

effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is necessary for the safety of the minor child. If the magistrate determines that the other party may have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody ~~to~~ pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 19.3. G.S. 50B-3(a)(4) reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order to bring about a cessation of acts of domestic violence. The orders may:

...

(4) Award temporary custody of minor children and establish temporary visitation ~~rights;~~rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process;"

..."

SECTION 19.4. G.S. 50B-3 is amended by adding the following new subsection to read:

"(a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

(1) In awarding custody or visitation rights, the court shall give primary consideration to the safety of the minor child.

(2) For purposes of determining custody and visitation issues, the court shall consider:

a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.

b. Whether the minor child was present during acts of domestic violence.

c. Whether a weapon was used or threatened to be used during any act of domestic violence.

d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.

e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.

f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.

g. Whether there is a pattern of abuse against an aggrieved party or the minor child.

h. Whether a party has abused or endangered the minor child during visitation.

i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.

j. Whether a party has improperly concealed or detained the minor child.

k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.

(3) If the court awards custody, the court shall also consider visitation. If ordering visitation, the court shall provide for the safety and well-being of the minor child and the safety of the aggrieved party. The court may consider any of the following:

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
e. Ordering the noncustodial parent to pay the costs of supervised visitation.
f. Prohibiting overnight visitation.
g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter."

SECTION 19.5. G.S. 50B-3(b) reads as rewritten:

"(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current ~~order.~~order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered,

including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved."

SECTION 19.6. This part becomes effective October 1, 2004, and applies to actions filed on or after that date.

PART XX. PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST DOMESTIC VIOLENCE VICTIMS

SECTION 20.1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-5.5. Employment discrimination unlawful.**

No employer may discharge, demote, or deny a promotion or other benefit of employment to any employee for taking time off from work to obtain or attempt to obtain any relief provided by this Chapter. The employee shall notify the employer of the reason for taking time off at the time the request is made. If requested by the employer, the employee shall also provide documentation to the employer of the reason for taking time off. Documentation may include a copy of a protective order or other evidence that the employee has appeared in court. The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article."

SECTION 20.2. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
   a. Chapter 97 of the General Statutes.
   b. Article 2A or Article 16 of this Chapter.
   c. Article 2A of Chapter 74 of the General Statutes.
   d. G.S. 95-28.1.
   e. Article 16 of Chapter 127A of the General Statutes.
   f. G.S. 95-28.1A.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.

(5) Seek relief under Chapter 50B of the General Statutes."

SECTION 20.3. This part becomes effective October 1, 2004, and applies to actions filed on or after that date.

PART XXI. PRIVACY FOR 50B INTAKE

SECTION 21.1. G.S. 50B-2(d) reads as rewritten:

"(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The ~~Clerk~~ clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 21.2. This part is effective when it becomes law.

PART XXII. TRAINING FOR JUDGES AND COURT PERSONNEL

SECTION 22.1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 22.2. The Administrative Office of the Courts shall study the issue of training for court personnel in the area of domestic violence. The study shall examine the following:

(1) The extent to which training is currently being done.
(2) The need for additional training.
(3) The amount and types of training that would be most appropriate.
(4) The potential costs and sources of funding for any additional training.

The Administrative Office of the Courts shall report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

SECTION 22.3. This part is effective when it becomes law.

PART XXIII. EFFECTIVE DATE

SECTION 23.1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H **D**

HOUSE BILL 1119
Committee Substitute Favorable 4/22/03
Third Edition Engrossed 4/29/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H1119-PCS70496-RR-48

Short Title: Election Law Changes - 1. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-132.3 reads as rewritten:

"**§ 163-132.3. Alterations to approved precinct boundaries.**

(a) No county board of elections may change any precinct boundary ~~unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of census blocks established under the latest U.S. Census.~~except in one of the following ways:

(1) By dividing an existing precinct into one or more new precincts, without involving other existing precincts. The lines on which the precincts are divided shall follow census blocks established under the latest U.S. Census.

(2) By combining one or more existing precincts into a new precinct. If one or more precincts are combined into a single precinct, the new precinct shall not be divided until at least four years after the effective date of the combination.

(3) By moving a precinct boundary that does not follow a census block boundary established under the latest U.S. Census so that that precinct boundary does follow such a census block boundary.

All proposed new precincts shall consist solely of contiguous territory.

This section does not prohibit a county from continuing to use precincts that were allowed under the Combined Reporting Unit provisions of G.S. 163-132.1(c)(6).

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps ~~or maps certified by the North Carolina Department of Transportation or the county's planning department~~ or on

other maps or electronic databases approved by the Executive Director the new boundaries of these precincts. The Executive Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this ~~subsection.~~ section. ~~No precinct may be changed under this section between the date its boundaries become effective under G.S. 163-132.1(c) and January 2, 2002. Any changes to precincts during that period shall be made as provided in G.S. 163-132.1(d).~~

(b) The Executive Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

~~(d) Upon a determination that restricting the county board to using Census block boundaries would force the county board to draw a precinct without an adequate voting place or otherwise to draw a precinct in such a way that the administration of elections would be seriously hindered, the Executive Director may permit a county board of elections to designate a precinct boundary on a line that is not a Census block boundary of the most recent federal decennial Census if both the following conditions exist:~~

~~(1) The feature desired by the county board to be the precinct boundary meets at least one of the following:~~

~~a. Is likely to be designated by the Census Bureau as a block boundary in the next federal decennial Census.~~

~~b. Is a visible physical feature, readily distinguishable upon the ground, as certified by the North Carolina Department of Transportation on its highway maps or by the county manager of the relevant county or if there is no county manager the chair of the county board of commissioners on official county maps, of the following nature:~~

~~1. Roads or streets.~~

~~2. Water features or drainage features.~~

~~3. Ridgelines.~~

~~4. Rail features.~~

~~5. Major aboveground power lines.~~
~~6. Major footpaths.~~
~~c. Is a municipalities boundary, as certified by the city clerk on the official map of the city.~~
~~d. Is a township boundary, as certified by the county manager, or the chair of the county board of commissioners if there is no county manager, on the official map of the county.~~
~~(2) All the following are true:~~
~~a. The precincts of which the line is a boundary which could be combined into a unit whose outer boundaries would be Census blocks, similar to the Combined Reporting Unit permitted by G.S. 163-132.1(c)(6).~~
~~b. That combined unit would be reasonable in size.~~
~~c. That combined unit, together with all other such combined units, would not undermine the coverage of the State's precincts in the next Census.~~

(e) During the period beginning October 1, 2002, and ending ~~December 31,~~ August 15, 2004, no county board of elections may change any precinct boundary. However, a county that has a precinct line that does not follow a 2000 Census Block Boundary may change that precinct line to conform to the way that precinct is shown on the General Assembly's redistricting database, provided the total population of the area moved from one precinct to another is not greater than ten percent (10%) of the total population of either precinct. A county board of elections proposing a change to a precinct during this period shall submit that change to the Legislative Services Office, which shall examine the proposed change and give its opinion of its compliance with this subsection to the Executive Director of the State Board of Elections. If the proposed change is in compliance with this subsection, the Executive Director shall approve it."

SECTION 1.(b) Article 12A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-132.3A. Alterations to precinct names.**

No county board of elections shall assign to any precinct a name that has been used after January 1, 1999, for a precinct comprising different territory. That requirement does not apply to a precinct change made under G.S. 163-132.3(a)(3). The county board of elections shall submit to the Executive Director of the State Board of Elections for approval every proposed change to a precinct name, and the Executive Director shall approve a name change only if it complies with this section."

SECTION 1.(c) This section becomes effective August 15, 2004. Any changes to precincts proposed for the 2004 election shall be completed by September 17, 2004.

SECTION 2.(a) G.S. 7A-41(b) is amended by adding a new subdivision to read:

"(10a) Effective with the 2004 election, in addition to the boundaries provided for in this section, Superior Court District 14A also includes

that portion of Durham Precinct 53 east of North Carolina Highway #751."

SECTION 2.(b) This section is effective when it becomes law, and also applies to the 2004 election cycle.

SECTION 3. G.S. 163-166.12 reads as rewritten:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

~~This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.~~

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at

least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 4. G.S. 163-82.4(b) reads as rewritten:

"(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. ~~163-275(4).~~163-275(13).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes."

SECTION 5. G.S. 163-299(d) reads as rewritten:

"(d) The provisions of Articles ~~13A~~14A and 15A of this Chapter shall apply to ballots used in municipal primaries and elections in the same manner as it is applied to county ballots."

SECTION 6. G.S. 163-213.5 reads as rewritten:

"**§ 163-213.5. Nomination by petition.**

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the Monday prior to the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. ~~163-96(b)(1) and (2)~~ 163-96 as they relate to the chairman of the county board of elections.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections."

SECTION 7. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for ~~and district court judge~~ elections under Article 25 of this Chapter."

SECTION 8.(a) G.S. 163-122 reads as rewritten:

"**§ 163-122. Unaffiliated candidates nominated by petition.**

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the ~~most recent statistical report issued by~~ voter registration records of the State Board of ~~Elections.~~ Elections as of January 1 of the year in which the general election is to be held. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking.

Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the ~~latest statistical report issued by~~ voter registration records of the State Board of ~~Elections.~~ Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the ~~most recent statistical report issued by~~ voter registration records of the State Board of ~~Elections,~~ Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the ~~most recent figures certified by the State Board of Elections.~~ voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters

specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. – Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF _____ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) This section does not apply to elections under Article 25 of this Chapter."

SECTION 8.(b) G.S. 163-296 reads as rewritten:

"**§ 163-296. Nomination by petition.**

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the ~~most recent figures certified by~~ voter registration records of the State Board of ~~Elections.~~ as of January 1 of the year in which the general election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office."

SECTION 9.(a) G.S. 163-82.6 reads as rewritten:

"**§ 163-82.6. Acceptance of application forms.**

(a) How the Form May Be Submitted. – The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who

communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used.

(c) Registration Deadlines for an Election. – In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in ~~person~~ person, ~~or~~ by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election, except as provided in subsection (d) of this section.

(c1) If the application is submitted by facsimile ~~transmission,~~ transmission or transmission of a scanned document, a permanent copy of the completed, signed form shall be delivered to the county board no later than 20 days before the election.

(d) Instances When Person May Register and Vote on Election Day. – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted

shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period."

SECTION 9.(b) G.S. 163-257 reads as rewritten:

"**§ 163-257. ~~Facsimile and~~ Facsimile, electronic ~~mail~~ mail, or scanned transmission of election materials.**

An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by ~~facsimile or~~ facsimile, electronic ~~mail~~ mail, or transmission of a scanned document if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive absentee ballot applications and accept voted ballots by ~~facsimile or~~ facsimile, electronic ~~mail~~ mail, or transmission of a scanned document from eligible electors as defined in G.S. 163-245. The State Board of Elections shall promulgate uniform rules for the use of ~~facsimiles and~~ facsimiles, electronic ~~mail~~ mail, and transmission of scanned documents in application and voting under this section, and all county boards of elections shall adhere to those rules."

SECTION 10. G.S. 163-97.1 reads as rewritten:

"**§ 163-97.1. Voters affiliated with expired political party.**

The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated" designation by the State

Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. ~~163-74(b).~~163-82.17."

SECTION 11. G.S. 163-213.7 reads as rewritten:

"**§ 163-213.7. Voting in presidential preference primary; ballots.**

The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an "uncommitted" or "no preference" status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an "uncommitted" or "no preference" status, but shall not be permitted to vote for candidates or "uncommitted" status of a political party different from his registration. Persons registered as "Unaffiliated" shall not participate in the presidential primary except as provided in G.S. ~~163-116.~~163-119."

SECTION 12. G.S. 163-1(b) reads as rewritten:

"(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those ~~offices.~~offices, and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter."

SECTION 13. G.S. 163-112(d)(4) reads as rewritten:

"(4) If ~~death, resignation~~ death or disqualification of candidates results in the number of candidates being less than the number of positions to be filled for that office, then the appropriate party executive committee shall, in accordance with G.S. 163-114, make nominations of persons equal to the number of positions to be filled and no primary shall be held and those names shall be printed on the general election ballot."

SECTION 14. G.S. 163-96(b) reads as rewritten:

"(b) Petitions for New Political Party. – Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED _____ AND WHOSE STATE CHAIRMAN IS _____, RESIDING AT _____ AND WHO CAN BE REACHED BY TELEPHONE AT _____ ~~THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION.~~"

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party

recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party."

SECTION 15. G.S. 163-278(9) reads as rewritten:

"(9) The terms 'expend' or 'expenditure' mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee. ~~The special definition of "expenditure" in G.S. 163-278.12A applies only in that section.~~"

SECTION 16. G.S. 163-278.12(a) reads as rewritten:

"(a) Subject to G.S. ~~163-278.16(f)~~ 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections."

SECTION 17.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.10B. Confidentiality of date of birth.**

Boards of elections shall keep confidential the date of birth of every voter-registration applicant and registered voter, except in the following situations:

(1) When a voter has filed notice of candidacy for elective office under G.S. 163-106, 163-122, 163-123, or 163-294.2, or 163-323, has been nominated as a candidate under G.S. 163-98 or G.S. 163-114, or has otherwise formally become a candidate for elective office. The exception of this subdivision does not extend to an individual who meets the definition of 'candidate' only by beginning a tentative candidacy by receiving funds or making payments or giving consent to someone else to receive funds or transfer something of value for the purpose of exploring a candidacy.

(2) When a voter is serving in an elective office.

(3) When a voter has been challenged pursuant to Article 8 of this Chapter.

(4) When a voter-registration applicant or registered voter expressly authorizes in writing the disclosure of that individual's date of birth.

The disclosure of an individual's age does not constitute disclosure of date of birth in violation of this section.

The county board of elections shall give precinct officials access to a voter's date of birth where necessary for election administration, consistent with the duty to keep dates of birth confidential.

Disclosure of a date of birth in violation of this section shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of a date of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 17.(b) G.S. 132-1.2(4) reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document."

SECTION 17.(c) G.S. 163-82.10 reads as rewritten:

"**§ 163-82.10. Official record of voter registration.**

(a) Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social

security numbers, dates of birth, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers or dates of birth in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers or dates of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure.

(a1) Paperless, Instant Electronic Transfer. – The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document.

(b) Access to Registration Records. – Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

(2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age ~~or~~ but not date of ~~birth or both,~~ birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in

subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. – Free lists of all registered voters in the county shall be provided in the following cases:

(1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:

a. The State chair of each political party; and

b. The county chair of each political party

once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, "political party" means a political party as defined in G.S. 163-96.

(d) Exception for Address of Certain Registered Voters. – Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this

subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2."

SECTION 17.(d) G.S. 163-82.13 reads as rewritten:

"**§ 163-82.13. Access to statewide voter registration file.**

(a) Free Copy for Political Parties. – Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163-96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, age but not date of birth, race, voting history, political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) Copies for Sale to Others. – Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, age but not date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it."

SECTION 17.(e) G.S. 163-42.1 reads as rewritten:

"**§ 163-42.1. Student election assistants.**

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appointed as a student election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.

(2) Be a resident of the county in which the student is appointed.

(3) Be enrolled in a secondary educational institution, including a home school as defined in G.S. 115C-563(a), with an exemplary academic record as determined by that institution.

(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.

(5) Have the consent of a parent, legal custodian, or guardian.

The county board of elections may appoint student election assistants, following guidelines which shall be issued by the State Board of Elections. No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as a precinct assistant, shall be sworn in the same manner as a precinct assistant, and shall be compensated in the same manner as precinct assistants. The county board of elections shall prescribe the duties of a student election assistant, following guidelines which shall be issued by the State Board of Elections. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election. The date of birth of a student election assistant shall be kept confidential."

SECTION 17.(f) This section becomes effective June 1, 2005.

SECTION 18. Except as otherwise provided in this act, this act becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1119

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1119-ARR-86 [v.2]

Date 7-8 ,2004

Comm. Sub. [YES]
Amends Title [NO] Y
H1119-CSRR-48[v.3]

Senator Berger

moves to amend the bill on page 13, lines 2 and 3,
by deleting the sentence "If a person withdraws as provided in this section, the person's filing fee shall be refunded." and substituting the sentence "If a person withdraws after the filing deadline, the person's filing fee shall not be refunded."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1119

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1119-ARR-91 [v.1]

Date 7-8 ,2004

Comm. Sub. [YES]
Amends Title [NO]
H1119-CSRR-48[v.4]

Senator NESBITT

moves to amend the bill on page 12, line 28, through page 13, line 10, by deleting Section 17 of the bill; and

by renumbering subsequent sections of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 1119: Election Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Alexander
Date:	July 8, 2004	**Summary by:**	William R. Gilkeson
Version:	H1119-CSRR-48[v.4]		Committee Co-Counsel

SUMMARY: ***The second Senate PCS for House Bill 1119 makes a number of technical and other changes to the elections laws. It is different from the first Senate PCS in that it drops a provision about coroner vacancy elections, adds Sections 1 and 2 about precincts and a Durham Superior Court judge district, and makes some changes to the birthdate privacy section, including moving the effective date from January 2005 to June.***

§ 1 – Precinct boundaries and names. Currently, the county boards of elections have the basic authority to establish and change precinct boundaries, as long as the boundaries follow Census block lines, and exceptions may be allowed to the Census block rule. Until Dec. 31, 2004, a freeze has been placed on precinct boundary changes. Current law gives counties a free hand in how they can name precincts. The PCS would lift the boundary freeze 4½ months early – on August 15, 2004, but would at that time impose a stricter rule for counties in how they can change precinct boundaries. They could either:

- Divide a precinct while leaving the outer boundaries the same, or
- Merge one or more precincts, leaving the outer boundaries the same.

The only other way to change a precinct line would be to move a line that is not now on a Census block boundary to a Census block boundary. Since very few precinct lines are not on Census block lines, this power would be rarely used. Precinct changes for the 2004 general election would have to be completed by Sept. 17, 2004.

As for precinct names, the bill would prohibit a county from using for a new precinct a name that in the past has been used for a precinct for different territory. The State Board of Elections would be responsible for enforcing the requirement. The "recycling" of precinct names in certain counties has been a vexation for people who try to keep up with voter registration and election data. The duty to check to see if a name has been used in the past only goes back to January 1, 1999. Before that, the State Board of Elections does not have precinct names available electronically.

§ 2 – Change of Superior Court District 14A in Durham. This section would make a small boundary change in Superior Court District 14A in Durham County. The district would include a house into which the incumbent, Judge Orlando Hudson, plans to move. Judge Hudson is running for re-election this year unopposed.

Sections 3-13 contain technical corrections and changes suggested by the State Board of Elections, but not included in the 2003 Technical Corrections Bills.

§ 3 -- Repositioning of language in voter identification statute required by Help America Vote Act. The change would clarify that boards of elections shall note what type of I.D. the voter provided, whether the voter voted in person or by mailed absentee ballot.

§ 4 -- Change criminal citation in statute about voter registration application. The change would refer to a felony statute that prohibits providing false information for voter registration, rather than to a statute that prohibits swearing falsely.

§ 5 -- Correct citation in municipal election statute.

§ 6 -- Correct citation in petition statute for presidential primaries.

§ 7 -- Correct incomplete wording in write-in statute referring to nonpartisan election of judges.

§ 8 -- Specify benchmark for number of registered voters in petition statutes. Sets voter registration as of January 1 of election year as benchmark for calculating number of signatures needed on petition for

unaffiliated candidacy. Current law says unaffiliated candidate must collect signatures from registered voters equal to certain percentages of registered voters as of "most recent" voter registration report by State Board of Elections. That was written when board of elections produced such a report twice a year. Now, with its statewide computerized voter registration system, State Board keeps constant track of number of registered voters, so the benchmark has become a moving target. This provision fixes the target at January 1.

§ 9. Scanned documents. Allows transmission of voter registration forms and overseas absentee ballot applications by emailing a scanned document, as well as faxed, mailed, and in person transmission.

§ 10 – Updates a citation in the statute that changes a voter's party registration to unaffiliated when the voter's party loses ballot access.

§ 11 – Updates a citation in the statute about voting in presidential primaries.

§ 12 – Makes conforming change to a statute to recognize that judicial elections are now nonpartisan.

§ 13 – Removes a stray reference to "resignation" in the statute about death of a primary candidate. (Note that Section 17 addresses withdrawal of a primary candidate in a substantive way.)

§ 14 – Removes from the statutory wording of a new party petition the current language that the undersigned voters "INTEND TO ORGANIZE" the new party. A federal court indicated 9 years ago in a lawsuit brought by Libertarians that the language might violate the First Amendment as an unreasonable burden on the rights of new-party organizers, but the court did not rule on the language then because the Libertarians presented no evidence that the language had hindered their efforts. The ACLU-NC says it has 30 affidavits produced by the Green Party from voters saying they would have signed a petition to admit the Green Party to the ballot except for the language on the petition saying they intended to organize the party. They said they did not intend to organize the party, but they did want to help it get on the ballot if all they had to do was sign the petition.

§ 15 – Removes from the definition of "expenditure" in the campaign finance law an unnecessary reference to G.S. 163-278.12A, a regulation of reference to candidates that has been declared unconstitutional.

§ 16 – Updates, in the statute regulating independent expenditures, a citation about ad-labeling.

§ 17 – Would allow a primary candidate to withdraw after the filing deadline. Current law specifies that a person who has filed to run in a party primary may withdraw that candidacy before the filing deadline but not after. A person may announce a withdrawal after the filing deadline, but the law is clear that the name will remain on the ballot, any votes for the person will be counted, and the filing fee will not be refunded. This section would reverse that rule, stating that if a filed primary candidate withdraws in writing after the deadline, the candidates name will not be placed on the ballot. If it is too late to remove the name from the ballot, the candidate will not become the nominee, no matter how many votes the person gets. Votes for the withdrawn candidate would not be counted for purposes of determining whether there would be a runoff, and the withdrawn candidate could not be in the runoff. Boards of elections, if possible, would notify voters which candidates still on the ballot had officially withdrawn. This provision would be applied to this year's primary July 20, if the provision is approved by that date under Section 5 of the Voting Rights Act.

§ 18 – Would require boards of elections to keep a voter's date of birth in voter registration records confidential. Currently the statute requires a voter to provide date of birth as an identifier. Election officials find it useful to distinguish many people with names like John Jones, some of whom live at the same address. The date of birth on a voter registration record is a public record. Some county boards of elections (Durham, for example) make a voter's date of birth available on their websites through a search of the records, if you plug in the voter's name. The State Board of Elections provides date of birth and address on the voter records searchable on its website, but it only provides those items if the searcher already knows the date of birth. This section would make date of birth a confidential item not only on elections websites but also on voter registration records. Candidates, elected officials, and challenged voters would be exempted from the protection, as would any voter who waived the date-of-birth privacy. Disclosure of the age of any voter would not violate the date-of-birth confidentiality requirement. This section would become effective June 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1119

Short Title:	Election Law Changes - 1.	(Public)
Sponsors:	Representative Alexander.	
Referred to:	Election Law and Campaign Finance Reform.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Subsections (e), (f), (g), (h), and (i) of G.S. 163-278.9 are repealed.

SECTION 2.(a) G.S. 163-278.6 is amended by adding a new subsection to read:

"(15a) "Political party organization" means any political party executive committee or any political committee that operates under the direction of a political party, political party executive committee, or political party chair."

SECTION 2.(b) G.S. 163-278.39B(6) reads as rewritten:

"(6) "Political party organization" means any political party executive committee or any political committee that operates under the direction of a political party, political party executive ~~committee~~ committee, or political party chair."

SECTION 3. G.S. 163-278.8(c) reads as rewritten:

"(c) A treasurer may not accept a contribution of more than one hundred dollars ($100.00) from a nonresident of this State unless the contribution is accompanied by a written statement setting forth the ~~name~~ name, daytime telephone number or e-mail address, and mailing address of each contributor."

SECTION 3.1. G.S. 163-278.66(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in excess of three thousand dollars ($3,000) in support of or opposition to a certified ~~candidate~~

candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds. After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board."

SECTION 4. G.S. 163-46 reads as rewritten:

"**§ 163-46. Compensation of precinct officials and assistants.**

The precinct chief judge shall be paid the state minimum wage for his services on the day of a primary, special or general election. Judges of election shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars ($5.00) for their services on the day of a primary, general or special election. If an election official is being paid an hourly wage or daily fee on an election day and the official is performing additional election duties away from the assigned precinct voting place, the official shall not be entitled to any additional monies for those services, except for reimbursable expenses in performing the services.

If the county board of elections requests the presence of a chief judge or judge at the county canvass, the chief judge shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day. If the county board of elections requests a precinct official, including chief judge or judge, to personally deliver official ballots or other official materials to the county board of elections, the precinct official shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day.

The chairman of the county board of elections, along with the director of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each chief judge and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars ($15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay chief judges, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as chief judge, or judge of election when a previously appointed chief judge or judge fails to appear at the voting place or leaves his post on the day of an election or primary shall be paid the same compensation as the chief judge or judge appointed prior to that date.

For the purpose of this section, the phrase "the State minimum wage," means the amount set by G.S. 95-25.3(a). For the purpose of this section, no other provision of Article 2A of Chapter 95 of the General Statutes shall apply."

SECTION 5. G.S. 163-112(b) reads as rewritten:

"(b) Death of One of More Than Two Candidates within 10 Days after the Filing Period Closes. – If at the close of the filing period more than two candidates have filed for a ~~single~~ single-seat office, and within 10 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 10 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office."

SECTION 6. G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' includes any type of municipal, county, or special district ~~referendum.~~ referendum and any initiative referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article."

SECTION 7.(a) G.S. 163-82.10(d) reads as rewritten:

"(d) Exception for Address of Certain Registered Voters. – Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the

county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2."

SECTION 7.(b) G.S. 9-2(g) reads as rewritten:

"(g) The custodian of the appropriate election registration records in each county shall cooperate with the jury commission in its duty of compiling the list required by this section. Nothing in this section authorizes the disclosure of addresses required to be kept confidential by G.S. 163-82.10(d)."

SECTION 8. G.S. 163-221 reads as rewritten:

"**§ 163-221. Persons may not sign name of another to petition.**

(a) No person may sign the name of another person ~~to:~~to any of the following:

(1) Any petition calling for an election or ~~referendum;~~referendum.

(2) Any petition under G.S. 163-96 for the formulation of a new political ~~party;~~party.

(3) Any petition under G.S. 163-107.1 requesting a person to be a ~~candidate;~~candidate.

(4) Any petition under G.S. 163-122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163-296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ~~ballot; or~~ballot.

(5) Any petition under G.S. 163-213.5 to place a name on the ballot under the Presidential Preference Primary Act.

(6) Any petition under G.S. 163-123 to qualify as a write-in candidate.

(b) Any name signed on a petition, in violation of this section, shall be void.

(c) Any person who willfully violates this section is guilty of a Class 2 misdemeanor."

SECTION 9. G.S. 6-19.1 reads as rewritten:

"**§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested

cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the appropriate agency if:

(1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees against the State Board of Elections concerning any decision of the board pertaining to election protests, contests, or disputes over election outcomes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source."

SECTION 10. G.S. 163-182.13(a) reads as rewritten:

"(a) When State Board May Order New Election. – The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent ~~that, although it is not possible to determine whether those irregularities or improprieties affected the outcome of the election,~~ that they taint the results of the entire election and cast doubt on its fairness."

SECTION 11. G.S. 163-182.14 reads as rewritten:

"**§ 163-182.14. Appeal of a final decision to superior court.**

A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to ~~prevail, and that the results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.~~ prevail."

SECTION 12. G.S. 163-213.4 reads as rewritten:

"**§ 163-213.4. Nomination by State Board of Elections.**

The State Board of Elections shall convene in Raleigh on the first ~~Tuesday in February~~ business day after the close of the candidate-filing period established in G.S. 163-106(c) preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

SECTION 13. Section 3 of this act becomes effective January 1, 2004. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — Name of Committee

1-8-04 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Assoc. County Commissioners
B. Paul Williams	NCHBA
Kit Gruelle	FVRC of Chatham Co & Cal POST
Beth Froehling	NCCADV
Robert Lee Guy	DCC - DOC
Mildred Spearman	DOC
Neff Osborne	AOC
Jim EDWARDS	DMV
JOHN GUARD	PITT COUNTY SHERIFF'S OFFICE
Leslie Starsoneck	(FVRDVC) DOA
Barry Bryant	Governor's Crime Commission
Fred Moreau Jr.	Office of Indigent Defense
SAM JOHNSON	NCAJ NCADJ
JOHNNY HERRIN	Lobbyist
Bruce Clarke	NCAI, ECNC
JOHN YARBORO	ECNC
Kathryn Hunter	State Board of Education
[illegible]	NC Justice Ctr.
PERRY MORGAN	NFIB
Steve Cline	DHHS - DPH
Colleen Kochanek	Hafer; Caldwell, P.A.
Victor Barbour	DOT
Tracy Simmons	Parker Poe
W. N. Polk	NCDOJ
Floyd Lewis	General Statutes Commission
ANN LOFT	DUHS
Kathy Hawkins	Progress Energy
John Madler	NC Sentencing Commission

VISITOR REGISTRATION SHEET

J-1 Committee — 7-8-04
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nathanael Kelley	NC Sentencing Commission
Tamara Flinchum	NC Sentencing Commission
Gary Bartlett	SBoE
Jo Andrea Miller	LANC
Gardner Payne	Edmiste & Webb
Chad Essick	Edmisten & Webb
Ivan Pierce	Duke Energy
John McAlister	Duke Energy
	NCCCS
	JD [illegible] PA
	Hospital Assoc.
	NCPA
	CYPC
	BCP
	NCDOT
Rick Zechini	NC Assn. of REALTORS
Steve Wall	DENR
	Parker Poe Gould
Adam Pridemore	NCHSA
George Laughton	Legal Aid
	[illegible]
	NCAHP
Michelle Frazier	NC Bar Ass'n
Katie Myers	NC Bar Assoc.
RW Kaylor	Kaylor Law Firm
Bill Scobee	KCLA

From: Wanda Joyner (Sen. Clodfelter)
Sent: Thursday, July 08, 2004 3:11 PM
To: Sen. Fletcher Hartsell, Jr.; Rep. Joe Hackney; Rep. Hugh Holliman; Rep. Rick Eddins; Rep. Jim Crawford
Subject: 07-09-2004 J-1 Comm Notice

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Friday	July 9, 2004	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1225	2004 Technical Corrections Act.	Senator Hartsell
HB 1046	Aggressive Driving.	Representative Hackney
HB 1519	Crime Victim Financial Recovery Assist. Act.	Representative Holliman Representative Eddins
HB 1345	DOT Technical Correction.	Representative Crawford, Jr.

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 9, 2004

Minutes

Senator Dan Clodfelter, Chair, Called the meeting to order at 9:00 a.m. with ten members present. He introduced Page Ben Thurkill from Rocky Mount, NC.

HB-1519 (Crime Victim Financial Recovery Assist. Act.) Committee Substitute was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor Representative Rick Eddins explained that the modified bill "Son of Sam" law is a recommendation of the House Select Committee on Preventing Unjust Profiteering from Crime. Staff attorney, Trina Griffin explained that the changes better enables crime victims to satisfy restitution orders and civil judgments entered against their offenders from the offender's assets by providing notice of the assets to the victims and by reviving the statute of limitations for a civil action once assets are discovered. See Bill Summary for further information. Senator's David Hoyle and Bob Carpenter had questions. Representative Eddins answered the questions. Senator Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

HB-1345 (DOT Technical Correction) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsor, Representative James Crawford, Jr., Senator Tony Rand explained that the bill would spell out the supplemental police authority of law enforcement officers of the Division of Motor Vehicles and the State Highway Patrol Motor Carrier Enforcement section. It grants temporary rulemaking authority to the DOT to adopt rules to implement electronic bidding previously authorized, and to make a technical correction in the name of a highway. Mr. Eddie Caldwell, NC Sheriff's Association spoke on the bill. Senator's Ham Horton and Charlie Albertson had questions. Senator Rand answered the questions. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-1225 (2004 Technical Corrections Act) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All Members voted yes. Motion carried. In the absence of bill sponsor, Senator Fletcher Hartsell, staff attorney Robin Johnson explained that the bill makes

technical corrections and other changes to various statutes and session laws. See attached Bill summary for further information. During discussion several Sections were flagged for further review. Senator David Hoyle offered an amendment on page 11, lines 15 and 16. Majority of members voted for adoption of the amendment. Motion carried. See attached amendment. Mr. Harry Kaplan with Cass Scientific in Harnett County spoke on the bill. Mr. Frank Folger with the NC Dept. of Insurance spoke on Licensing in the state for those who sell insurance. Senator's Jeanne Lucas, Tony Rand, Ham Horton, Ralph Hunt and Phillip Berger had questions. Staff attorney, Walker Reagan and Michele Frazier with NC Bar Assoc. answered the questions. Senator Clodfelter stated that the bill would be displaced and discussed further at the next committee meeting.

Being no further business the meeting adjourned at 9:50 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, July 09, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1345** DOT Technical Correction.

Draft Number:	PCS 70504
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1519** Crime Victim Financial Recovery Assist. Act.

Draft Number:	PCS 30578
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1519

Committee Substitute Favorable 6/2/04

PROPOSED SENATE COMMITTEE SUBSTITUTE H1519-PCS30578-SV-60

Short Title: Crime Victims Financial Recovery Assist. Act. (Public)

Sponsors:

Referred to:

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE PROFIT FROM CRIME.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 1 through 25 of Chapter 15B of the General Statutes are redesignated as Article 1 of Chapter 15B. The Revisor of Statutes is authorized to make changes in the newly designated Article 1 that will reflect the results of the recodification.

SECTION 2. Chapter 15B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"The Crime Victims Financial Recovery Assistance Act.

"**§ 15B-30. Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that:

(1) No person who commits a crime should thereafter gain monetary profit as the result of committing the crime.

(2) Victims of crime have a special relationship to any profit from the crime committed against them, including the personal belongings and memorabilia of a convicted felon whose criminal actions and resulting notoriety enhance the value of those belongings and memorabilia.

(3) To the extent profit from crime would not have been realized but for an offender's commission of illegal acts, an offender does not have an

equitable interest in the profit and allowing the offender to retain the profit would result in the offender's unjust enrichment.

The General Assembly finds that the State has a compelling interest in ensuring that persons convicted of crimes do not profit from those crimes, and that victims of crime are compensated by those who have harmed them.

The General Assembly further finds that crime victims have difficulty satisfying restitution orders or civil judgments entered against their offenders because the victims often lack the expertise and resources to identify or locate assets that an offender may have.

In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing a mechanism by which crime victims are notified of the existence of an offender's assets and are authorized to bring an action to recover those assets.

"**§ 15B-31. Definitions.**

The following definitions apply in this Article:

(1) Commission. – The Crime Victims Compensation Commission established under G.S. 15B-3.

(2) Convicted. – A finding or verdict of guilty by a jury or by entry of a plea of guilty or no contest, or a finding of not guilty by reason of insanity.

(3) Crime memorabilia. – Any tangible property belonging to or that belonged to an offender prior to conviction, the value of which is increased by the notoriety gained from the conviction of a felony.

(4) Earned income. – Income derived from one's own labor or through active participation in a business, as distinguished from income including dividends or investments.

(5) Eligible person. – Any of the following:

a. A victim of the crime for which the offender was convicted.

b. A surviving spouse, parent, or child of a deceased victim of the crime for which the offender was convicted.

c. Any other person dependent for the person's principal support upon a deceased victim of the crime for which the offender was convicted.

However, 'eligible person' does not include the offender or an accomplice to the offender.

(6) Felony. – An offense defined as a felony by any North Carolina or United States statute that was committed in North Carolina and that resulted in physical or emotional injury, or death, to another person.

(7) Funds of an offender. – All funds and property received from any source by an offender, excluding child support and earned income, where the offender:

a. Is an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility or federal correctional institute, and includes funds that a

superintendent, sheriff, or municipal official receives on behalf of an inmate or prisoner and deposits in an inmate account to the credit of the inmate or deposits in a prisoner account to the credit of the prisoner; or

b. Is not an inmate or prisoner but who is serving a sentence of probation, conditional discharge, or post-release supervision.

(8) Offender. – A person who has been convicted of a felony or that person's legal representative or assignee.

(9) Profit from crime. – Any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including any income, assets, or property generated from the sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of the crime, as well as any gain from the sale, conversion, or exchange of the income, assets, or property. 'Profit from crime' does not include voluntary donations or contributions to an offender used to assist in the appeal of a conviction, provided the donation or contribution is not given in exchange for something of material value.

(10) Victim. – Any natural person who suffers physical or emotional injury, or the threat of physical or emotional injury, as the result of the commission of a felony.

"**§ 15B-32. Notice of contract or agreement to pay.**

(a) Notice to Commission. –

(1) Every person, firm, corporation, partnership, association, or other legal entity, or representative of a person, firm, corporation, partnership, association, or entity that knowingly contracts for, pays, or agrees to pay to an offender (i) profit from crime or (ii) funds of an offender where the value or aggregate value of the payment or payments exceeds ten thousand dollars ($10,000) shall submit to the Commission a copy of the contract or reduce to writing the terms of any oral agreement or obligation to pay as soon as practicable after discovering the payment or intended payment constitutes profit from crime or funds of an offender.

(2) Whenever the payment or obligation to pay involves funds of an offender that a superintendent, sheriff, or municipal officer (i) receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility, (ii) deposits or will deposit in an inmate account to the credit of an inmate or prisoner, and (iii) the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State or subdivision of the State shall also give written notice to the Commission.

(3) Whenever the State or a subdivision of the State makes a payment or has an obligation to pay funds of an offender and the value of such

funds exceeds or will exceed ten thousand dollars ($10,000), the State or subdivision of the State shall also give written notice to the Commission.

(4) In all other instances where the payment or obligation to pay involves funds of an offender and the value or aggregate value of the funds exceeds or will exceed ten thousand dollars ($10,000), the offender who receives or will receive the funds shall give written notice to the Commission.

(b) Notice to Eligible Persons. – The Commission shall, upon receipt of a notice of a contract, an agreement to pay, or payment of profit from crime or funds of an offender, notify in writing by certified mail, return receipt requested, all known eligible persons where the eligible persons' names and addresses are known to the Commission. The Commission may, in its discretion, provide for additional notice as it deems necessary.

"**§ 15B-33. Penalties.**

(a) Assessment and Civil Penalty for Failure to Give Notice. – Any person or entity, other than the State, a subdivision of the State, or a person who is a superintendent, sheriff, or municipal official, who willfully fails to give notice as required by G.S. 15B-32 is subject to an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to one thousand dollars ($1,000) or ten percent (10%) of the payment or obligation to pay, whichever is greater.

(b) Notice and Opportunity to Be Heard Required. – After providing notice and opportunity to be heard in accordance with the provisions of Chapter 150B of the General Statutes, the Commission may order the respondent to pay the assessment and civil penalty imposed by this section.

(c) Failure to Pay. – If a respondent fails to pay the assessment and civil penalty imposed by this section within sixty (60) days of being ordered to pay, the assessment and civil penalty may be recovered from the respondent by an action brought by the attorney general, upon the request of the Commission, in any court of competent jurisdiction.

(d) Establishment of Escrow Account; Notice to Eligible Persons. – The Commission shall deposit the assessment in an escrow account pending the expiration of the three-year statute of limitations authorized by G.S. 15B-34 to preserve the funds to satisfy a civil judgment in favor of an eligible person to whom the failure to give notice relates. The Commission shall notify any eligible person who may have a claim against the offender of the existence of the funds being held in escrow. The notice shall instruct the eligible person that the person may have a right to commence a civil action against the offender as well as any other information deemed necessary by the Commission.

(e) Satisfaction of Judgment from Escrow Account. – Upon an eligible person's presentation to the Commission of a civil judgment for damages arising out of the offense for which the offender was convicted, the Commission shall satisfy up to one hundred percent (100%) of that judgment, including costs and disbursements as taxed by the clerk of the court, with the escrowed fund obtained pursuant to this section, but in

no event shall the amount of all judgments, costs, and disbursements satisfied from the escrowed funds exceed the amount in escrow. If more than one eligible person indicates to the Commission that the eligible person intends to commence or has commenced a civil action against the offender, the Commission shall delay satisfying any judgment, costs, and disbursements until the claims of all eligible persons are reduced to judgment. If the aggregate of all judgments, costs, and disbursement obtained exceeds the amount of escrowed funds, the amount used to partially satisfy each judgment shall be reduced to a pro rata share.

(f) Return of Unclaimed Escrowed Funds. – After the expiration of the three-year statute of limitations period established in G.S. 15B-34, the Commission shall review all judgments that have been satisfied from the escrowed funds. In the event no claim was filed prior to the expiration of the three-year statute of limitations, the Commission shall return the escrowed amount to the respondent. In the event a claim or claims are pending at the expiration of the statute of limitations, the funds shall remain escrowed until the final determination of all claims to allow the Commission to satisfy any judgment which may be obtained by the eligible person after which time any remaining escrowed amount shall be returned to the respondent.

(g) Remittance of Proceeds from Civil Penalty. – The Commission shall remit the clear proceeds of the civil penalty of up to one thousand dollars ($1,000) or ten percent (10%) of the payment or obligation to pay, whichever is greater, assessed under this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 15B-34. Civil action to recover profits or funds; responsibilities of the Commission.**

(a) Civil Action. – Notwithstanding any inconsistent provision of law with respect to the timely bringing of an action, an eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action in a court of competent jurisdiction against an offender for damages arising out of the offense for which the offender was convicted.

(b) Notice by Eligible Persons. – Upon filing an action under subsection (a) of this section, the eligible person shall give notice to the Commission of the filing by delivering a copy of the summons and complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action so as to allow the Commission to apply for any appropriate provisional remedies, which are otherwise authorized to be invoked prior to the commencement of an action.

(c) Responsibilities of Commission. – Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the eligible person prior to filing an action, the Commission shall immediately take action to:

(1) Notify all other known eligible persons of the filing of the civil action by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission.

(2) Provide, in its discretion, for additional notice as it deems necessary.

(3) Avoid the wasting of the assets identified in the complaint as the profit from crime or funds of an offender in any manner consistent with subsection (d) of this section.

(d) Standing; Authority to Avoid Wasting of Assets. – The Commission has standing and, acting on its own behalf or on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action brought under subsection (a) of this section, including attachment, injunction, constructive trust, and receivership. On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

"**§ 15B-35. Subrogation by the Crime Victims Compensation Fund.**

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

"**§ 15B-36. Conviction overturned or pardon issued.**

If profit from crime is subject to a provisional remedy on behalf of eligible persons and the conviction for the criminal offense from which profit from crime is realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, those funds shall be returned to the rightful owner.

"**§ 15B-37. Evasive action void.**

Any action taken by an offender, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Article shall be void as against the public policy of this State."

SECTION 3. G.S. 1-15.1(a) reads as rewritten:

"(a) Notwithstanding any other provision of law, if a defendant is convicted of a criminal offense and is ordered by the court to pay restitution or restitution is imposed as a condition of probation, special probation, work release, or parole, then all applicable statutes of limitation and statutes of repose, except as established herein, are tolled for the period set forth in this subsection for purposes of any civil action brought by an aggrieved party against that defendant for damages arising out of the offense for which the defendant was convicted. Any statute of limitation or repose applicable in the civil action shall be tolled from the time of entry of the court order

(1) Requiring that restitution be made,

(2) Making restitution a condition of probation or special probation, or

(3) Recommending that restitution be made a condition of work release or parole,

and until the defendant has paid in full the amount of restitution ordered or imposed. ~~Provided, however, in no event shall~~ Except as provided in G.S. 15B-34, an action to recover damages arising out of the criminal offense shall not be commenced more than 10 years from the last act of the defendant giving rise to the cause of action."

SECTION 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 5. This act becomes effective October 1, 2004, and applies to contracts for profit from crime entered into on or after that date or funds of an offender that have accrued on or after that date.

HOUSE BILL 1519:
Crime Victim Financial Recovery Assistance Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Eddins and Holliman
Date:	July 8, 2004	**Summary by:**	Trina Griffin
Version:	PCS to 2nd Edition H1519-CSSV-60		Committee Counsel

SUMMARY: ***This bill, which is a modified "Son of Sam" law, is a recommendation of the House Select Committee on Preventing Unjust Profiteering from Crime. It better enables crime victims to satisfy restitution orders and civil judgments entered against their offenders from the offender's assets by providing notice of the assets to the victims and by reviving the statute of limitations for a civil action once assets are discovered.***

BILL ANALYSIS:

Declaration of Purpose. – The bill declares as a matter of public policy that no person who commits a crime should thereafter gain monetary profit as the result of committing the crime. Furthermore, the bill declares that convicted felons do not possess equitable title to profit from their crimes, and that the property is subject to seizure by the State for the benefit of the victims. This section identifies the compelling State interests, recognized as such by the United States Supreme Court, ensuring that persons convicted of crimes do not profit from those crimes and that victims of crime are compensated by those who have harmed them.

Notice of Profit from Crime or Funds of an Offender. – The bill requires the following entities that knowingly enter into a contract for or pay or agree to pay profit from crime or funds of an offender to notify the Commission and to submit a copy of the contract:

- The contracting party
- The State or a subdivision of the State whenever the payment or obligation to pay involves funds of an offender in excess of $10,000 that a superintendent, sheriff, or municipal officer receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility.
- The State or a subdivision of the State when it makes a payment or has an obligation to pay funds of an offender in excess of $10,000.00.

In all other instances where the payment or obligation to pay involves funds of an offender and the value of the funds exceeds or will exceed $10,000.00, the offender who receives or will receive the funds shall give written notice to the Commission.

"Profit from crime" is defined as any income, assets, or property generated from the commission of a crime for which the offender was convicted, including any income generated from the sale of crime memorabilia or obtained through unique knowledge obtained during the commission of the crime. Crime memorabilia is defined as tangible property belonging to or that belonged to an offender prior to conviction, the value of which is increased by the offender's notoriety.

"Funds of an offender" is defined as all funds and property received from any source by an offender, excluding child support and earned income, where the offender is (i) an inmate serving a sentence with the Department of Corrections or a prisoner confined at a local correctional facility or federal correctional

institute, or (ii) a person serving a sentence of probation, conditional discharge, or post-release supervision.

Penalty for Failure to Notify. – A person who willfully fails to provide notice as required would be subject to an assessment in the amount of the payment or obligation to pay, to be levied after notice and opportunity to be heard, plus a civil penalty in the amount of $1,000 or 10% of the obligation to pay, whichever is greater. Once collected, the assessment would be placed in escrow for the benefit of eligible persons who would be notified of their right to bring a civil action. The proceeds of the civil penalty would be remitted to the Civil Penalty and Forfeiture Fund. The bill also provides for the return to the respondent of any unclaimed funds held in escrow upon the expiration of the three-year statute of limitations period and upon final determination of all pending claims.

Notice to Eligible Persons by Commission. – The Commission must notify all "eligible persons" of the existence of the contract. An eligible person means (1) a victim of the crime for which the offender was convicted; (2) a surviving spouse, parent, or child of a deceased victim of the crime for which the offender was convicted; or (3) any other person dependent for the person's principal support upon a deceased victim of the crime for which the offender was convicted. However, 'eligible person' does not include the offender or an accomplice to the offender.

Revival of Statute of Limitations; Notice of Civil Action. – If the eligible person has already obtained a civil judgment against the offender for damages arising out of the offense for which the offender was convicted, the eligible person may proceed to execute against those assets as provided for by current law. If the eligible person has not obtained a civil judgment, the person would have three years from the notice of the profit from crime or funds of the offender to bring a civil action for damages arising out of the offense for which the offender was convicted. The eligible person must submit a copy of the lawsuit to the Commission, which, in turn, would attempt to notify all other eligible persons of the lawsuit.

Responsibilities of and Authority of the Commission. –

1. Notice to Eligible Persons. – The Commission, upon receipt of notice of a contract or agreement to pay profit from crime or funds of an offender, shall notify all known eligible victims of the existence of the contract or agreement.
2. Notice of Civil Action. – The Commission, upon notice of the filing of a civil action, shall notify all other eligible victims of the filing.
3. Authority to Avoid Wasting of Assets. – The Commission has standing and, acting on its own behalf or on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action, including attachment, injunction, constructive trust, and receivership.

Subrogation by Commission. – Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

CURRENT LAW:

Forty-two states and the federal government have enacted legislation designed to prevent criminals from profiting from their crimes by redirecting the profits to the victims. However, despite their popularity, the constitutionality of these laws, commonly referred to as "Son of Sam" laws, is unclear.

North Carolina has never enacted a Son of Sam statute. In North Carolina, there are three methods by which a crime victim may recover compensation for a crime committed against him or her: (1) obtain a restitution order, (2) file a claim with the Crime Victims' Compensation Commission, or (3) file a civil lawsuit and recover a money judgment.

1. *Restitution.* – When sentencing a defendant convicted of a criminal offense, the court is required to determine whether the defendant should be ordered to make restitution to any victim or the victim's estate for any injuries or damages arising directly from the offense. In determining the amount of restitution, the court must consider certain factors, such as the value of any property damaged or destroyed; in the case of physical injury, the cost of necessary medical and related professional services, any physical or occupational therapy, and income lost by the victim; and in the case of the victim's death, the cost of funeral and related services. However, an order of restitution may not include compensation for pain and suffering, according to a recent North Carolina Court of Appeals case.[1] The court must also take into account the resources of the defendant, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution. The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim. Generally, a restitution order is enforceable in the same manner as a civil judgment. A restitution order does not, however, abridge the right of a victim to bring a civil action against the defendant, but any amount paid by the defendant under the terms of a restitution order are credited against any judgment rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.
2. *Crime Victims Compensation Fund.* – A crime victim may apply to the Crime Victims Compensation Commission for an award to compensate the victim for economic loss resulting from criminally injurious conduct. In order to obtain an award, the claimant must file an application within two years of the criminally injurious conduct, the economic loss must have occurred within one year of the conduct, and the conduct must have been reported to law enforcement within 72 hours of its occurrence. In using its discretion to determine whether a claim should be denied, the Commission may take into consideration whether the offender would benefit from the award, whether the victim was participating in the criminal conduct, or whether the victim was incarcerated at the time of the offense. Any award will be reduced to the extent the loss will be recouped by a collateral source. There is also a limit of $200 per week on any award for the compensation of replacement services loss, a dependent's economic loss, and a dependent's replacement services loss. Compensation for work loss and household support loss may not exceed $300 per week. Total compensation payable to a victim and all other claimants for loss resulting from the criminally injurious conduct may not exceed $30,000 in the aggregate. A court may require a defendant to pay restitution regardless of whether the victim receives compensation from the Crime Victims Compensation Fund.
3. *Civil Action.* – A person may bring a civil action in tort, including a wrongful death action, to recover a money judgment for actual, and possibly, punitive damages. A money judgment is enforced by execution against the judgment debtor's property.

---

[1] *State of North Carolina v. Wilson*, 580 S.E.2d 386, 2003 N.C.App. LEXIS 1045 (June 3, 2003).

The enforcement of a restitution order and a money judgment will depend on the resources of the offender and may be paid from any of the defendant's assets, but not necessarily from assets related to the commission of the crime. An award from the Crime Victims Compensation Fund is paid from State and federal funds. A restitution order and an award from the Fund are limited to economic losses whereas a plaintiff in a civil action may recover damages for pain and suffering and, under certain circumstances, punitive damages.

BACKGROUND:

Origin. – In 1977, David Berkowitz, dubbed the "Son of Sam," committed a series of murders in New York creating a media frenzy. Before the investigation was even complete, publishers were offering to pay a huge sum of money for the rights to his story. In a hasty response, the New York State Legislature enacted a law prohibiting criminals from using their notoriety for profit, which became known as the "Son of Sam" law.[2] This law provided that when any person entered into a contract with a person accused of committing a crime with respect to the reenactment or recounting of the crime by way of a book, movie, television show, etc., the party (usually a corporation) contracting with him or her had to pay over to the state all profits that would otherwise be paid to the offender. These funds would be held for the benefit of the offender's victims, or in some cases, contributed to the state victim compensation fund. Following New York's lead, 41 additional states and the federal government enacted similar Son of Sam laws. The principle behind these laws being that it is contrary to public policy to allow violent criminals to profit from the retelling of their crimes while their victims are forced to endure the added emotional pain from the publicity.

Constitutional Challenges. –

1. *Simon & Schuster, Inc. v. New York Crime Victims Board*

   Arrested in 1980 on drug charges, a mobster named Henry Hill exchanged testimony against his former associates for immunity from prosecution. In 1981, Hill contracted with an author to write a biography detailing his life of crime. The pair then entered into a publishing agreement with Simon & Schuster, Inc. Published in 1986, the book, which recounted many of Hill's crimes, became a bestseller and was the basis of the Oscar award-winning film, *Goodfellas*. The same month the book was published, the New York State Crime Victims Board ordered Simon & Schuster, Inc. to submit copies of the contract, to turn over records of all payments to Hill, and to suspend future payments. Simon & Schuster, Inc. brought suit against the Board challenging the constitutionality of New York's Son of Sam law.

   In 1991, the United States Supreme Court held in *Simon & Schuster, Inc. vs. New York Crime Victims Board*, 112 S. Ct. 501 (1991), that the law was an unconstitutional violation of the First Amendment right to free speech. The Court first determined that since the laws targeted only profits that resulted from activities related to speech (such as books, movies, interviews, etc.), the law was subject to strict scrutiny and, therefore, must be narrowly written to achieve a compelling state interest. The Court acknowledged that providing financial recovery to crime victims was a compelling interest. It also found that it was not necessary that the particular victims compensated be the victims of that offender; payment to other victims, through the state compensation fund, was also acceptable. However, the

[2] Ironically, this law never applied to David Berkowitz. Berkowitz was found incompetent to stand trial, which exempted him from the law. Nevertheless, Berkowitz voluntarily donated the royalties he received from a book chronicling his criminal escapades to his victims and their estates. Today, Berkowitz claims to be a born-again Christian and is actively working against the ability of third parties to sell memorabilia with his likeness.

Court found that the law was not narrowly written. The law was overbroad in that it applied not only to convicted offenders, but also to those accused of a crime and those who "voluntarily and intelligently admitted to the commission of a crime" even if the person was never prosecuted. In addition, the law made no distinctions between materials that were substantially about the crime and those in which the mention of the crime was only tangential or insignificant. For example, books by persons such as St. Augustine, Thoreau, and Malcolm X would have fallen under the purview of the law since they all had mentioned in their works crimes they had committed.

While the Supreme Court's decision involved only the New York law, nearly all notoriety-for-profit statutes had similar language, so their constitutionality was also called into question. As a result, several legislatures amended their laws in an attempt to make them constitutional.

2. *Keenan v. Superior Court*

California was among the handful of states that revised its Son of Sam statute in response to the *Simon & Schuster, Inc.* decision. The revised law limited its scope to persons actually convicted of felonies and excluded profits from forfeiture where the crime was mentioned "in mere passing." The statute was challenged in the highly publicized case of *Keenan v. Superior Court*, 40 P.3d 718 (Cal. Sup. Ct. 2002). In that case, a high school student named Barry Keenan devised a plan with two friends to kidnap Frank Sinatra, Jr. and demand a $240,000 ransom. Sinatra was released after a few days and Keenan served a prison term for kidnapping. Thirty-five years later, Keenan sought to cash in on his experience by attempting to sell the rights to the story. Sinatra sued under California's Son of Sam law. In 2002, the California Supreme Court found the statutory section at issue to be facially invalid under the First Amendment. The Court held that the statutory section was not narrowly tailored because it penalized the content of speech to an extent far beyond that necessary to transfer fruits of crime from criminals to their uncompensated victims. The court observed that the statute not only confiscated funds received from the telling of the story of the crime, but seized a convicted felon's proceeds from speech or expression on any theme or subject which includes the story of the felony, except by "mere passing mention." The court concluded that the effect of the statute was to discourage "the creation and dissemination of a wide range of ideas and expressive works which have little or no relationship to the exploitation of one's criminal misdeeds." The court struck down the California law and the United States Supreme Court denied certiorari in October of 2002.

While these two cases have been the most highly publicized, the Supreme Court of Rhode Island also struck down that State's Son of Sam law.

Legislative Response. – In response to the *Simon & Schuster, Inc.* decision, new legislation was enacted by the State of New York and several other states. However, nearly one-third of all states have not altered their notoriety-for-profit statutes. Some states that have amended their laws, have not addressed the Supreme Court's concerns. Most of these statutes, while still on the books, would likely be held unconstitutional if challenged. However, a number of states have attempted to revise their laws to make them constitutional but none of these revised statutes have been challenged on constitutional grounds.

The most common change made to such laws has been expanding them to cover any profit received, directly or indirectly, from crimes, not just profits from speech-related activities. For instance, Iowa targets "fruits of the crime" defined as "any profit which, were it not for the commission of the felony, would not have been realized." Oklahoma's amended law applies to "any proceeds or profits from any source, as a direct or indirect result of the crime or sentence, or the notoriety which the crime or sentence has conferred upon the defendant." In contrast, Tennessee targets "all income, from whatever source

derived, which is owing to the defendant, or representative or assignee of the defendant, after the date of the crime."

Many of the amended laws still focus on speech-related profits, but exclude materials in which the reference to the crime was incidental or tangential. The Kansas law applies to speech-related profits "provided, such book, magazine or other publication, movie, radio or television presentation or live entertainment of any kind deals principally with the crime for which the person is accused and convicted." Another common change has been to restrict the notoriety-for-profit statutes to convicted offenders.

Crime Memorabilia Amendments. – Traditional Son of Sam laws did not prevent criminals from commercializing their crimes through non-speech-related activities. Generally, those laws only apply to the recounting or reenactment of a crime through speech-related activities, such as in movies and books. However, the emergence of an underground trade in objects associated with crime, especially murder, has resulted in a handful of states amending their Son of Sam statutes in an attempt to restrict profiteering from tangible goods owned by a criminal or associated with a crime, the value of which has been enhanced due to the notoriety of the criminal. These restrictions on profiteering may apply to the offender as well as to third parties selling items related to the crime.

In 2000, California amended its law to extend its involuntary trust provisions to profiteers. The *Keenan* case did not present a challenge to this portion of the law and thus, the Court did not address the constitutionality of this provision, which it found to be severable. In 2001, Texas amended its Son of Sam statute by requiring that any increased value gained from the notoriety of the crime be turned over to the state's attorney general. New York's revised law is also broad enough to cover crime memorabilia.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1519

Committee Substitute Favorable 6/2/04

Short Title: Crime Victim Financial Recovery Assist. Act. (Public)

Sponsors:

Referred to:

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE PROFIT FROM CRIME.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 1 through 25 of Chapter 15B of the General Statutes are redesignated as Article 1 of Chapter 15B. The Revisor of Statutes is authorized to make changes in the newly designated Article 1 that will reflect the results of the recodification.

SECTION 2. Chapter 15B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"The Crime Victim Financial Recovery Assistance Act.

"**§ 15B-30. Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that:

(1) No person who commits a crime should thereafter gain monetary profit as the result of committing the crime.

(2) Victims of crime have a special relationship to any profit from the crime committed against them, including the personal belongings and memorabilia of a convicted felon whose criminal actions and resulting notoriety enhance the value of those belongings and memorabilia.

(3) To the extent profit from crime would not have been realized but for an offender's commission of illegal acts, an offender does not have an equitable interest in the profit and allowing the offender to retain the profit would result in the offender's unjust enrichment.

The General Assembly finds that the State has a compelling interest in ensuring that persons convicted of crimes do not profit from those crimes, and that victims of crime are compensated by those who have harmed them.

The General Assembly further finds that crime victims have difficulty satisfying restitution orders or civil judgments entered against their offenders because the victims often lack the expertise and resources to identify or locate assets that an offender may have.

In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing a mechanism by which crime victims are notified of the existence of an offender's assets and are authorized to bring an action to recover those assets.

"**§ 15B-31. Definitions.**

The following definitions apply in this Article:

(1) Commission. – The Crime Victims Compensation Commission established under G.S. 15B-3.

(2) Convicted. – A finding or verdict of guilty by a jury or by entry of a plea of guilty or no contest or a finding of not guilty by reason of insanity.

(3) Crime memorabilia. – Any tangible property belonging to or that belonged to an offender prior to conviction, the value of which is increased by the notoriety gained from the conviction of a felony.

(4) Earned income. – Income derived from one's own labor or through active participation in a business, as distinguished from income, for example, from dividends or investments.

(5) Eligible person. –

a. A victim of the crime for which the offender was convicted.

b. A surviving spouse, parent, or child of a deceased victim of the crime; or

c. Any other person dependent for the person's principal support upon a deceased victim of the crime.

However, 'eligible person' does not include the offender or an accomplice to the offender.

(6) Felony. – An offense defined as a felony by any North Carolina or United States statute that was committed in North Carolina and that resulted in physical or emotional injury, or death, to another person.

(7) Funds of an offender. – All funds and property received from any source by an offender, excluding child support and earned income, where the offender:

a. Is an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility or federal correctional institute, and includes funds that a superintendent, sheriff, or municipal official receives on behalf of an inmate or prisoner and deposits in an inmate account to

the credit of the inmate or deposits in a prisoner account to the credit of the prisoner; or

b. Is not an inmate or prisoner but who is serving a sentence of probation, conditional discharge, or post-release supervision.

(8) Offender. – A person who has been convicted of a felony or that person's legal representative or assignee.

(9) Profit from crime. – Any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including any income, assets, or property generated from the sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of the crime, as well as any gain from the sale, conversion, or exchange of the income, assets, or property. 'Profit from crime' does not include voluntary donations or contributions to an offender used to assist in the appeal of a conviction, provided the donation or contribution is not given in exchange for something of material value.

(10) Victim. – Any natural person who suffers physical or emotional injury, or the threat of physical or emotional injury, as the result of the commission of a felony.

"**§ 15B-32. Notice of contract or agreement to pay.**

(a) Notice to Commission. –

(1) Every person, firm, corporation, partnership, association, or other legal entity, or representative of a person, firm, corporation, partnership, association, or entity that knowingly contracts for, pays, or agrees to pay to an offender (i) profit from crime or (ii) funds of an offender where the value or aggregate value of the payment or payments exceeds ten thousand dollars ($10,000) shall submit to the Commission a copy of the contract or reduce to writing the terms of any oral agreement or obligation to pay as soon as practicable after discovering the payment or intended payment constitutes profit from crime or funds of an offender.

(2) Whenever the payment or obligation to pay involves funds of an offender that a superintendent, sheriff, or municipal officer (i) receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility, (ii) deposits or will deposit in an inmate account to the credit of an inmate or prisoner, and (iii) the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State or subdivision of the State shall also give written notice to the Commission.

(3) Whenever the State or a subdivision of the State makes a payment or has an obligation to pay funds of an offender and the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State

or subdivision of the State shall also give written notice to the Commission.

(4) In all other instances where the payment or obligation to pay involves funds of an offender and the value or aggregate value of the funds exceeds or will exceed ten thousand dollars ($10,000), the offender who receives or will receive the funds shall give written notice to the Commission.

(b) Notice to Eligible Persons. – The Commission shall, upon receipt of a notice of a contract, an agreement to pay, or payment of profit from crime or funds of an offender, notify in writing by certified mail, return receipt requested, all known eligible persons where the eligible persons' names and addresses are known to the Commission. The Commission may, in its discretion, provide for additional notice as it deems necessary.

(c) Penalties. – Any person or entity, other than the State, a subdivision of the State, or a person who is a superintendent, sheriff, or municipal official required to give notice pursuant to this section, who willfully fails to comply with subsection (a) of this section is subject to a civil penalty up to the amount of the payment or obligation to pay, plus one thousand dollars ($1,000) or ten percent (10%) of the payment of obligation to pay, whichever is greater.

After providing notice and opportunity to be heard, the Commission may by order assess the penalties prescribed by this subsection. If the penalties are not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the legal rate. An action to recover a civil penalty assessed under this section may be brought by the Commission within three years after the cause of action accrues.

The clear proceeds of penalties assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 15B-33. Civil action to recover profits or funds; responsibilities of the Commission.**

(a) Civil Action. – Notwithstanding any inconsistent provision of law with respect to the timely bringing of an action, an eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action in a court of competent jurisdiction to recover money damages from an offender.

(b) Notice by Eligible Persons. – Upon filing an action under subsection (a) of this section, the eligible person shall give notice to the Commission of the filing by delivering a copy of the summons and complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action so as to allow the Commission to apply for any appropriate provisional remedies, which are otherwise authorized to be invoked prior to the commencement of an action.

(c) Responsibilities of Commission. – Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the eligible person prior to filing an action, the Commission shall immediately take action to:

(1) Notify all other known eligible persons of the filing of the civil action by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission.

(2) Provide, in its discretion, for additional notice as it deems necessary.

(3) Avoid the wasting of the assets identified in the complaint as the profit from crime or funds of an offender in any manner consistent with subsection (d) of this section.

(d) Authority to Avoid Wasting of Assets. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action brought under subsection (a) of this section, such as attachment, injunction, constructive trust, and receivership. On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(e) Enforcement of Judgment. – Notwithstanding any other provision of law to the contrary, a judgment obtained pursuant to this section shall not be subject to execution or enforcement against the first one thousand dollars ($1,000) deposited in an inmate account to the credit of the inmate or in a prisoner account to the credit of the prisoner. In addition, where the civil action involves funds of an offender and those funds were recovered by the offender pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section may not be subject to enforcement or execution against the first ten percent (10%) of any compensatory damages awarded to the offender in a civil action.

"**§ 15B-34. Subrogation by the Crime Victims Compensation Fund.**

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

"**§ 15B-35. Conviction overturned or pardon issued.**

If profit from crime is subject to a provisional remedy on behalf of eligible persons and the conviction for the criminal offense from which profit from crime is realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, those funds shall be returned to the rightful owner.

"**§ 15B-36. Evasive action void.**

Any action taken by an offender, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Article shall be void as against the public policy of this State."

SECTION 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 4. This act is effective when it becomes law and applies to contracts for profit from crime entered into on or after that date or funds of an offender that have accrued on or after that date.

HOUSE BILL 1519

Short Title:	Crime Victim Financial Recovery Assist. Act.	(Public)
Sponsors:	Representatives Eddins, Holliman (Primary Sponsors); B. Allen, Gillespie, Harrell, Justus, Pate, A. Williams, K. Williams, Hilton, McLawhorn, and Stiller.	
Referred to:	Judiciary IV.	

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE PROFIT FROM CRIME.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 1 through 25 of Chapter 15B of the General Statutes are redesignated as Article 1 of Chapter 15B. The Revisor of Statutes is authorized to make changes in the newly designated Article 1 that will reflect the results of the recodification.

SECTION 2. Chapter 15B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"The Crime Victim Financial Recovery Assistance Act.

"**§ 15B-30. Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that:

(1) No person who commits a crime should thereafter gain monetary profit as the result of committing the crime.

(2) Victims of crime have a special relationship to any profit from the crime committed against them, including the personal belongings and memorabilia of a convicted felon whose criminal actions and resulting notoriety enhance the value of those belongings and memorabilia.

(3) To the extent profit from crime would not have been realized but for an offender's commission of illegal acts, an offender does not have an

equitable interest in the profit and allowing the offender to retain the profit would result in the offender's unjust enrichment.

The General Assembly finds that the State has a compelling interest in ensuring that persons convicted of crimes do not profit from those crimes, and that victims of crime are compensated by those who have harmed them.

The General Assembly further finds that crime victims have difficulty satisfying restitution orders or civil judgments entered against their offenders because the victims often lack the expertise and resources to identify or locate assets that an offender may have.

In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing a mechanism by which crime victims are notified of the existence of an offender's assets and are authorized to bring an action to recover those assets.

"**§ 15B-31. Definitions.**

The following definitions apply in this Article:

(1) Commission. – The Crime Victims Compensation Commission established under G.S. 15B-3.

(2) Convicted. – A finding or verdict of guilty by a jury or by entry of a plea of guilty or no contest or a finding of not guilty by reason of insanity.

(3) Crime memorabilia. – Any tangible property belonging to or that belonged to an offender prior to conviction, the value of which is increased by the notoriety gained from the conviction of a felony.

(4) Earned income. – Income derived from one's own labor or through active participation in a business, as distinguished from income, for example, from dividends or investments.

(5) Eligible person. –

a. A victim of the crime for which the offender was convicted.

b. A surviving spouse, parent, or child of a deceased victim of the crime; or

c. Any other person dependent for the person's principal support upon a deceased victim of the crime.

However, 'eligible person' does not include the offender or an accomplice to the offender.

(6) Felony. – An offense defined as a felony by any North Carolina or United States statute that was committed in North Carolina and that resulted in physical or emotional injury, or death, to another person.

(7) Funds of an offender. – All funds and property received from any source by an offender, excluding child support and earned income, where the offender:

a. Is an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility or federal correctional institute, and includes funds that a superintendent, sheriff, or municipal official receives on behalf

of an inmate or prisoner and deposits in an inmate account to the credit of the inmate or deposits in a prisoner account to the credit of the prisoner; or

b. Is not an inmate or prisoner but who is serving a sentence of probation, conditional discharge, or post-release supervision.

(8) Offender. – A person who has been convicted of a felony or that person's legal representative or assignee.

(9) Profit from crime. – Any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including any income, assets, or property generated from the sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of the crime, as well as any gain from the sale, conversion, or exchange of the income, assets, or property. 'Profit from crime' does not include voluntary donations or contributions to an offender used to assist in the appeal of a conviction, provided the donation or contribution is not given in exchange for something of material value.

(10) Victim. – Any natural person who suffers physical or emotional injury, or the threat of physical or emotional injury, as the result of the commission of a felony.

"**§ 15B-32. Notice of contract or agreement to pay.**

(a) Notice to Commission. –

(1) Every person, firm, corporation, partnership, association, or other legal entity, or representative of a person, firm, corporation, partnership, association, or entity that knowingly contracts for, pays, or agrees to pay to an offender (i) profit from crime or (ii) funds of an offender where the value or aggregate value of the payment or payments exceeds ten thousand dollars ($10,000) shall submit to the Commission a copy of the contract or reduce to writing the terms of any oral agreement or obligation to pay as soon as practicable after discovering the payment or intended payment constitutes profit from crime or funds of an offender.

(2) Whenever the payment or obligation to pay involves funds of an offender that a superintendent, sheriff, or municipal officer (i) receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility, (ii) deposits or will deposit in an inmate account to the credit of an inmate or prisoner, and (iii) the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State or subdivision of the State shall also give written notice to the Commission.

(3) Whenever the State or a subdivision of the State makes a payment or has an obligation to pay funds of an offender and the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State

or subdivision of the State shall also give written notice to the Commission.

(4) In all other instances where the payment or obligation to pay involves funds of an offender and the value or aggregate value of the funds exceeds or will exceed ten thousand dollars ($10,000), the offender who receives or will receive the funds shall give written notice to the Commission.

(b) Notice to Eligible Persons. – The Commission shall, upon receipt of a notice of a contract, an agreement to pay, or payment of profit from crime or funds of an offender, notify in writing by certified mail, return receipt requested, all known eligible persons where the eligible persons' names and addresses are known to the Commission. The Commission may, in its discretion, provide for additional notice as it deems necessary.

(c) Penalties. – Any person or entity, other than the State, a subdivision of the State, or a person who is a superintendent, sheriff, or municipal official required to give notice pursuant to this section, who willfully fails to comply with subsection (a) of this section is subject to a civil penalty up to the amount of the payment or obligation to pay, plus one thousand dollars ($1,000) or ten percent (10%) of the payment of obligation to pay, whichever is greater.

After providing notice and opportunity to be heard, the Commission may by order assess the penalties prescribed by this subsection. If the penalties are not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the rate of one percent (1%) per month, compounded monthly. An action to recover a civil penalty assessed under this section may be brought by the Commission within three years after the cause of action accrues.

The clear proceeds of penalties assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 15B-33. Civil action to recover profits or funds; responsibilities of the Commission.**

(a) Civil Action. – Notwithstanding any inconsistent provision of law with respect to the timely bringing of an action, an eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action in a court of competent jurisdiction to recover money damages from an offender.

(b) Notice by Eligible Persons. – Upon filing an action under subsection (a) of this section, the eligible person shall give notice to the Commission of the filing by delivering a copy of the summons and complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action so as to allow the Commission to apply for any appropriate provisional remedies, which are otherwise authorized to be invoked prior to the commencement of an action.

(c) Responsibilities of Commission. – Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the eligible person prior to filing an action, the Commission shall immediately take action to:

(1) Notify all other known eligible persons of the filing of the civil action by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission.

(2) Publish, at least once every six months for three years from the date of the discovery of the profit from crime or funds of an offender, a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to that county advising any eligible person of the existence of profit from crime or funds of an offender. The Commission may, in its discretion, provide for additional notice as it deems necessary.

(3) Avoid the wasting of the assets identified in the complaint as the profit from crime or funds of an offender in any manner consistent with subsection (d) of this section.

(d) Authority to Avoid Wasting of Assets. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action brought under subsection (a) of this section, such as attachment, injunction, constructive trust, and receivership. On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(e) Enforcement of Judgment. – Notwithstanding any other provision of law to the contrary, a judgment obtained pursuant to this section shall not be subject to execution or enforcement against the first one thousand dollars ($1,000) deposited in an inmate account to the credit of the inmate or in a prisoner account to the credit of the prisoner. In addition, where the civil action involves funds of an offender and those funds were recovered by the offender pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section may not be subject to enforcement or execution against the first ten percent (10%) of any compensatory damages awarded to the offender in a civil action.

"**§ 15B-34. Subrogation by the Crime Victims Compensation Fund.**

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

"**§ 15B-35. Conviction overturned or pardon issued.**

If profit from crime is subject to a provisional remedy on behalf of eligible persons and the conviction for the criminal offense from which profit from crime is realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, those funds shall be returned to the rightful owner.

"**§ 15B-36. Evasive action void.**

Any action taken by an offender, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Article shall be void as against the public policy of this State."

SECTION 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 4. This act is effective when it becomes law and applies to contracts for profit from crime entered into on or after that date or funds of an offender that have accrued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1345*
PROPOSED SENATE COMMITTEE SUBSTITUTE H1345-PCS70504-RU-66

Short Title: Special Officers Authority/ DOT Tech. Corr. (Public)

Sponsors:

Referred to:

May 10, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE STATE HIGHWAY PATROL MOTOR CARRIER ENFORCEMENT OFFICERS AND OFFICERS OF THE DIVISION OF MOTOR VEHICLES TO ENFORCE CERTAIN CRIMINAL LAWS, TO EXTEND THE TEMPORARY RULE-MAKING PERIOD FOR THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR ELECTRONIC BIDDING, AND TO MAKE A TECHNICAL CORRECTION TO THE HIGHWAY TRUST FUND STATUTES AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-49.1. Supplemental police authority of Division officers.**

(a) In addition to the law enforcement authority granted in G.S. 20-49 or elsewhere, the Commissioner and the officers and inspectors of the Division whom the Commissioner designates have the authority to enforce criminal laws under any of the following circumstances:

(1) When they have probable cause to believe that a person has committed a criminal act in their presence and at the time of the violation they are engaged in the enforcement of laws otherwise within their jurisdiction.

(2) When they are asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, the Division officers shall have the same powers vested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this subsection, the Division officers shall not be considered an officer, employee, or agent of the State or local law enforcement agency or designee asking for temporary assistance. Nothing in this section shall be construed

to expand the Division officers' authority to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction.

(b) In addition to the law enforcement authority granted in G.S. 20-49 or elsewhere, the Commissioner and the officers and inspectors of the Division whom the Commissioner designates have the authority to investigate drivers license fraud and identity thefts related to drivers license fraud and to make arrests for these offenses."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-49.2. Supplemental authority of State Highway Patrol Motor Carrier Enforcement officers.**

(c) In addition to law enforcement authority granted in G.S. 20-49 or elsewhere, all sworn Motor Carrier Enforcement officers of the State Highway Patrol shall have the authority to enforce criminal laws under the following circumstances:

(1) When they have probable cause to believe that a person has committed a criminal act in their presence and at the time of the violation they are engaged in the enforcement of laws otherwise within their jurisdiction.

(2) When they are asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this section, they shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this section, they shall not be considered an officer, employee, or agent for the State or local law enforcement agency or designee asking for temporary assistance. Nothing in this statute shall be construed to expand their authority to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

SECTION 3.(a) The Secretary of Transportation may adopt temporary rules in accordance with G.S. 150B-21.1 to implement the provisions of G.S. 136-28.1(k) governing the acceptance of bids by electronic means. The authority granted to the Secretary by this section shall expire when the permanent rules necessary to implement this provision are adopted.

SECTION 3.(b) This section becomes effective when it becomes law and expires on June 30, 2005.

SECTION 4. G.S. 136-180(a) reads as rewritten:

"(a) Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
...		
Greensboro Loop	Multilane facility on new location encircling City of Greensboro including	

	interchanges with Cone Boulevard Extension and ~~Lewis-Fleming~~ Lewiston-Fleming Road Extension	Guilford

...."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1345: Special Officers Authority/DOT Technical Correction.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Crawford
Date:	July 8, 2004	**Summary by:**	O. Walker Reagan
Version:	Proposed Committee Substitute H1345-CSRU-66 [v.2]		Committee Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1345 would spell out the supplemental police authority of law enforcement officers of the Division of Motor Vehicles and the State Highway Patrol Motor Carrier Enforcement section. The bill also grants temporary rulemaking authority to the Department of Transportation to adopt rules to implement electronic bidding previously authorized, and to make a technical correction in the name of a highway.***

CURRENT LAW: Law enforcement officers of the Division of Motor Vehicles have the responsibility for enforcing drivers license and motor vehicle identity theft laws. Law enforcement officers of the State Highway Patrol's Motor Carrier Enforcement have responsibility for enforcing the motor vehicle weight limit laws.

BILL ANALYSIS: Sections 1 and 2 of the proposed committee substitute grant to law enforcement officers of the Division of Motor Vehicles and the State Highway Patrol Motor Carrier Enforcement section, respectively, authority to enforce general criminal laws in two limited situation outside their normal duties:

- While engaging in the enforcement of laws otherwise in their jurisdiction, when the officer has probable cause to believe that a person has committed a criminal act in the officer's presence.
- When the officers are asked to provide temporary assistance by another law enforcement agency and the request is within that agency's subject matter jurisdiction.

While acting at the request of another agency, the officer is not considered an employee of the agency. Nothing in this section expands the officer's authority to act independently outside the scope of their subject matter or territorial jurisdiction.

Section 3 of the bill allows the Secretary of Transportation to adopt temporary rules to implement the Department's authority to accept bids by electronic means. The Department was given this authority in 2001 but was not equipped to implement this process until after the time to adopt temporary rules had expired. The authority granted in this provision will expire when the permanent rules are adopted or by June 30, 2005, whichever time is sooner.

Section 4 corrects the spelling of a road in Guilford County that is part of a project under the Highway Trust Fund.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1345*

Short Title:	DOT Technical Correction.	(Public)
Sponsors:	Representatives Crawford; and K. Williams.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 10, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE A TECHNICAL CORRECTION TO THE HIGHWAY TRUST FUND STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-180(a) reads as rewritten:

"(a) Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
...		
Greensboro Loop	Multilane facility on new location encircling City of Greensboro including interchanges with Cone Boulevard Extension and ~~Lewis-Fleming~~ Lewiston-Fleming Road Extension	Guilford

...."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

A.T. Committee — 7-9-04

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cuvey	BPMHL
R. Paul Williams	NCHRA
John Kasbe	NC Family Policy Council
Rev. Mark Creech	Christian Action League of NC
Michelle Frazier	NC Bar Ass'n
Barbara Camden	BSCGR
John Bowtris	AST
CE. Lockley	SHP
C J CARDEN	SHP
Sandra Skinner	NCCPS
Jim Blackburn	NC Association of County Commissioners
R.E. Clendenin	NC Highway Patrol
Elizabeth Self	NCGA Intern
Steve Woodson	NC Farm Bureau
Jimmy Upchurch	Hanton, Williams
Tom Wescott	Sprint
[illegible]	NCRA
Edwin Caldwell	NC Sheriffs Assn / NC Law Enforcement Officers Assn
Ellen Goodin	KCBA
Bill Wilson	NCATC
Hal D Miller	NCACCT
Marvin B. Waters	CCPS
Leslie Bragg	NCCBI
Paul Stock	Leslie's Entourage
Joey Hunter	NC DMV License + Theft
Esther Mae Davis	ElectriCities
Pam Headen	Retirement / DST
David Barnes	Payne + Sparrow LLP

VISITOR REGISTRATION SHEET

A-1 Committee — 7-9-04

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
[illegible]	JD AL PA.
Stephen Bevan	ESC-NC
Victor Bell	DOT
Tracy Kimbrell	Parker PCE
Michael Houser	NCHE
Gardner Layton	Edmisten & Webb
Chad Essick	Edmisten & Webb
[illegible]	NBMC
[illegible]	Bass & Assoc.
[illegible]	NCCA
[illegible]	[illegible]
[illegible]	UTC
[illegible]	Cultra
[illegible]	Nationwide
Joyce Peters	LP Assoc.
Angie Harris	Wampler Taylor
[illegible]	NCBA
Dean Plunkett	NCBWA
[illegible]	NMRS
[illegible]	[illegible]
[illegible]	NCFA
Stacy Flannery	NCFFA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I** will meet at the following time:

DAY	DATE	TIME	ROOM
Monday	July 12, 2004	5:30 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1046	Aggressive Driving.	Representative Hackney
SB 1225	2004 Technical Corrections Act.	Senator Hartsell

Senator Daniel G. Clodfelter, Chair

Judiciary I Committee

July 12, 2004

Minutes

Senator Dan Clodfelter, Chair, called the meeting together at 5:31 p.m. with ten members present.

HB-1046 (Aggressive Driving) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Joe Hackney explained the bill. Senator Jeanne Lucas had a question. Staff attorney, Hal Pell answered the question. Senator Lucas moved for a Favorable Report. All members voted yes. Motion carried.

HB-1225 (2004 Technical Corrections Act) Committee Substitute was introduced by Senator Clodfelter. This bill was discussed at the last Judiciary I meeting and would be open for further discussion at this meeting. Thirteen amendments were offered to the bill by Senator's David Hoyle #1, Charlie Albertson #2, Tony Rand #3, #4, #5, #6, & #7 Phillip Berger #8, Tony Rand #9 & #10, Jeanne Lucas #11, Cecil Hargett #12, R.C. Soles #13. All amendments were adopted except Senator Hargett's amendment #12, which was withdrawn. See attached amendments. During discussion of the bill, Mr. Mike Mangum, Director, NC State Purchasing Department, Mr. Harry Kaplan, Ammunitions Manufacturing Company, Mr. Marvin Waters, Counsel for NC Department of Crime Control, Mr. Joe Dugdale, Counsel to NC Highway Patrol, Major Carnell Taylor, NC State Highway Patrol spoke on Section 33 of the bill. Senator Clodfelter asked for further discussion, being none, he asked for a motion on the bill. Senator Ham Horton moved for a Favorable Report as amended. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 6:45 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, July 12, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1225** 2004 Technical Corrections Act.

Draft Number:	PCS 35505
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, July 12, 2004

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1046** Aggressive Driving.

Draft Number:	PCS 60532
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 1046
Committee Substitute Favorable 4/23/03
Third Edition Engrossed 4/29/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H1046-PCS60532-RK-86

Short Title: Aggressive Driving. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF AGGRESSIVE DRIVING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.6. Aggressive Driving.**

(a) Any person who operates a motor vehicle on a street, highway, or public vehicular area is guilty of aggressive driving if the person:

(1) Violates either G.S. 20-141 or G.S. 20-141.1, and

(2) Drives carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.

(b) For the purposes of this section only, in order to prove a violation of subsection (a)(2), the State must show that the person committed two or more of the below specified offenses while in violation of subsection (a)(1):

(1) Running through a red light in violation of G.S. 20-158(b)(2) or (b)(3), or G.S. 20-158(c)(2) or (c)(3).

(2) Running through a stop sign in violation of G.S. 20-158(b)(1) or (c)(1).

(3) Illegal passing in violation of G.S. 20-149 or G.S. 20-150.

(4) Failing to yield right-of-way in violation of G.S. 20-155, 20-156, 20-158(b)(4) or (c)(4), or 20-158.1.

(5) Following too closely in violation of G.S. 20-152.

(c) A person convicted of aggressive driving is guilty of a Class 1 misdemeanor.

(d) The offense of reckless driving under G.S. 20-140 is a lesser-included offense of the offense set forth in this section."

SECTION 2. G.S. 20-16(a)(9) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

...

(9) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour, or of~~hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour;~~hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

..."

SECTION 3. G.S. 20-16(c) reads as rewritten:

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Aggressive driving	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2

Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus 8
Rail-highway crossing violation 6
Careless and reckless driving in violation of G.S. 20-140(f) 6
Speeding in violation of G.S. 20-141(j3) 6
Aggressive driving 6
Reckless driving 5
Hit and run, property damage only 5
Following too close 5
Driving on wrong side of road 5
Illegal passing 5
Running through stop sign 4
Speeding in excess of 55 miles per hour 4
Failing to yield right-of-way 4
Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height

Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

SECTION 4. G.S. 20-17(a)(6) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(6) ~~Conviction upon~~Conviction, within a period of 12 months, of (i) two charges of reckless ~~driving committed within a period of 12 months.~~driving, (ii) two charges of aggressive driving, or (iii) one or more charges of reckless driving and one or more charges of aggressive driving.

..."

SECTION 5. G.S. 20-17(a)(7) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(7) Conviction upon one charge of aggressive driving or reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

..."

SECTION 6. This act becomes effective December 1, 2004, and applies to offenses committed on or after that date.

HOUSE BILL 1046 PCS: Aggressive Driving.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	
Date:	July 8, 2004	**Summary by:**	Hal Pell
Version:	H1046-CSRK-86		Committee Co-Counsel

SUMMARY: ***This act creates the offense of aggressive driving, a Class 1 misdemeanor. A violation of the law would require that the driver exceed the speed limit and commit other specified motor vehicle violations.***

BACKGROUND: Several states have adopted "aggressive driving" statutes. The measures are designed to punish drivers who commit several moving violations at the same time with a separate penalty. North Carolina has a "reckless driving" statute. Reckless driving can be shown one of two ways: (1) that the person was in willful or wanton disregard of the rights or safety of others, or (2) that the person drove without due caution that was likely to endanger others [no willful element]. Reckless driving is a Class 2 misdemeanor, and a conviction carries four driving points towards revocation or suspension.

BILL ANALYSIS:

- A person is guilty of aggressive driving if the person violates any speed limit provision and is driving in willful or wanton disregard of the rights or safety of others.
- For the purposes of this statute only, the State must show that the driver (while speeding) committed two or more of the offenses listed in subsection (b) in order to show that the driver was in willful or wanton disregard of the rights or safety of others.
- The offense is a Class 1 misdemeanor, and would carry five points towards suspension or revocation of a driver's license.
- The operator of a commercial vehicle would get six points upon conviction. The offense of reckless driving, G.S. 20-140, would be a lesser included offense.

The provision is effective December 1, 2004, and would apply to offenses occurring on or after that date.

H1046PCS-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1046

Short Title:	Fire and Rescue Pension Increase.	(Public)
Sponsors:	Senators Hoyle; Albertson, Apodaca, Brock, Dalton, Foxx, Holloman, Hunt, Kerr, Malone, Moore, Queen, Sloan, Smith, Swindell, Thomas, and Weinstein.	
Referred to:	Pensions & Retirement and Aging.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-86-55 reads as rewritten:

"**§ 58-86-55. Monthly pensions upon retirement.**

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of ~~one hundred fifty-eight dollars ($158.00)~~ one hundred sixty-three dollars ($163.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 2003,~~ July 1, 2004, receive a pension of ~~one hundred fifty-eight dollars ($158.00)~~ one hundred sixty-three dollars ($163.00) per month.

Members shall pay ten dollars ($10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1983. No member shall be entitled to a pension hereunder until the member's official duties as a fireman or rescue squad worker for which the member is paid compensation shall have been terminated and the member shall have retired as such according to standards or rules fixed by the board of trustees.

A member who is totally and permanently disabled while in the discharge of the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of ~~one hundred fifty-eight dollars ($158.00)~~ one hundred sixty-three dollars ($163.00) per month

beginning the first month after the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars ($10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose volunteer department is taken over by a city or county, and because of such annexation or takeover is unable to perform as a fireman or rescue squad worker of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

SECTION 2. This act becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1225*
PROPOSED COMMITTEE SUBSTITUTE S1225-PCS35505-RH-71

Short Title: 2004 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 62-3 reads as rewritten:

"**§ 62-3. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

...

(23) ...

a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing

electricity, heat, or steam for sale to or for the public for compensation;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such 15 or more building lots, without regard to the number of actual customers connected;

3. Transporting persons or household goods by street, suburban or interurban bus for the public for compensation;

4. Transporting persons or household goods by motor vehicles or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, carriers by rail, and carriers by air;

5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;

6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term "public utility" shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation;

or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

e. The term "public utility" shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term "public utility" shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term "public utility" shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

h. The term "public utility" shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of

the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

i. The term "public utility" shall not include the State, the Office of ~~the State Controller,~~ Information Technology Services, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

j. The term "public utility" shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.

k. The term "public utility" shall not include a regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes.

...."

SECTION 2. G.S. 111-52 reads as rewritten:

"**§ 111-52. Profits from Highway Vending Fund.**

Profits generated by highway vending locations as of June 30, 1992, and deposited in a special fund in accordance with the ~~Administrative Policies and Procedures Manual~~ policies of the Office of the State Controller shall be reserved for the construction and maintenance of highway vending facility projects."

SECTION 3. G.S. 113-307.1(b) reads as rewritten:

"(b) The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public Law 415, 75th Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of ~~Agriculture~~ the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Wildlife Resources Commission."

SECTION 4. G.S. 115C-102.5(e) reads as rewritten:

"(e) The Department of Public Instruction, the Department of Community Colleges, and the Office of ~~the State Controller~~ Information Technology Services shall

provide requested professional and clerical staff to the Commission. The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work. The Commission shall use an outside consultant to perform a requirements analysis for learning and instructional management technologies on a statewide basis that is based on information gathered from each local school administrative unit and that considers the needs of teachers, students, and administrators."

PART II. OTHER CHANGES

SECTION 5.(a) G.S. 1A-1, Rule 5(d), reads as rewritten:

"(d) Filing. – All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3), depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service."

SECTION 5.(b) This section becomes effective October 1, 2004, and applies to all pending cases and all cases filed on or after that date.

SECTION 6. G.S. 10A-16(d) reads as rewritten:

"(d) This section applies to notarial acts performed on or before ~~March 1, 2003.~~February 1, 2004."

SECTION 7. G.S. 14-33(d) reads as rewritten:

"(d) Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person, or uses a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor, is guilty of a Class A1 misdemeanor. A person convicted under this subsection, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court.

A person committing a second or subsequent violation of this subsection shall be sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court.

The following definitions apply to this subsection:

(1) "Personal relationship" is as defined in G.S. 50B-1(b).

(2) "In the presence of a minor" means that the minor was in a position to have observed the assault.

(3) "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault."

SECTION 8. G.S. 18B-103 is amended by adding a new subdivision to read:

"(11) The delivery, possession, or consumption of alcoholic beverages under the direct supervision of an instructor during a class that is part of an established curriculum at an accredited college or university, including delivery to or possession or consumption by a student who is less than 21 years of age, when the student is required to taste or imbibe the alcoholic beverage during a class conducted pursuant to the curriculum."

SECTION 9. G.S. 18B-1006(m)(2) reads as rewritten:

"(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to ~~G.S. 18B-1006(k)(5).~~G.S. 18B-1006(k). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet ~~any~~ all of the following requirements:

a. Located within one mile of any interstate highway interchange in that ~~county.~~county;

b. Located within one mile of an establishment issued a permit under ~~G.S. 18B-1006(k)(5).~~G.S. 18B-1006(k); and

c. Is, or is located within, one-quarter mile of a hotel with 70 or more rooms."

SECTION 10. G.S. 19A-24(1) reads as rewritten:

"**§ 19A-24. Powers of Board of Agriculture.**

The Board of Agriculture may:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel which offers dog day care services, and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations which restrict the number of dogs that are permitted within any primary enclosure.

...."

SECTION 11.(a) G.S. 20-16.1(b) reads as rewritten:

"(b) ...

(3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to ~~the resident judge of the superior~~

~~court~~ a district court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.

...."

"**SECTION 11.(b)** G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action ~~arose,~~ arose or where the injured employee ~~resides or the~~ resides, or to a presiding judge ~~before whom the cause of action is pending,~~ of either district, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien, whether based on accrued or prospective workers' compensation benefits, and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable, in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

SECTION 12. G.S. 20-179.4 reads as rewritten:

"**§ 20-179.4. Community service alternative punishment; responsibilities of the Department of ~~Crime Control and Public Safety;~~ Correction; fee.**

(a) The Department of ~~Crime Control and Public Safety~~Correction shall conduct a community service alternative punishment program for persons sentenced under G.S. 20-179(i), (j) or (k).

(b) The Secretary of ~~Crime Control and Public Safety~~Correction shall assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service sentence. The appointment of each coordinator shall be made in consultation with the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county.

(c) A fee of two hundred dollars ($200.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so.

(d) Fees collected under this section shall be deposited in the general fund.

(e) The coordinator shall report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. The court shall then conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until the community service requirement has been met and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation."

SECTION 13. G.S. 47-2 reads as rewritten:

"**§ 47-2. Officials of the United States, foreign countries, and sister states.**

The execution of all such instruments and writings as are permitted or required by law to be registered may be proved or acknowledged before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, of countries under the dominion of the United States and of foreign countries: Any judge of a court of record, any clerk of a court of record, any notary public, any commissioner of deeds, any commissioner of oaths, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice-consul, consul general, vice-consul general, associate consul, or any other person authorized by federal law to acknowledge documents as consular officers, or commercial agent of the United States, any justice of the peace of any state or territory of the United States, any officer of the army or air force of the United States or United States marine corps having the rank of warrant officer or higher, any officer of the United States navy or coast guard having the rank of warrant officer, or higher, or any officer of the United States merchant marine having the rank of warrant officer, or higher. No official seal shall be required of said military, naval or merchant marine official, but he shall sign his name, designate his rank, and give the name of his ship or military organization and the date, and for the purpose of certifying said acknowledgment, he shall use a form in substance as follows:

On this the _____ day of _____, ____, before me _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be accompanying or serving in or with the armed forces of the United States (or to be the spouse of a person accompanying or serving in or with the armed forces of the United States) and to be the person whose name is subscribed to the within instruments and acknowledged that _____ he _____ executed the same for the purposes therein contained. And the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the armed forces of the United States.

_____

Signature of Officer

_____

Rank of Officer and command to which attached.

If the proof or acknowledgment of the execution of an instrument is had before a justice of the peace of any state of the United States other than this State or of any territory of the United States, the certificate of such justice of the peace shall be accompanied by a certificate of the clerk of some court of record of the county in which such justice of the peace resides, which certificate of the clerk shall be under his hand and official seal, to the effect that such justice of the peace was at the time the certificate of such justice bears date an acting justice of the peace of such county and state or territory and that the genuine signature of such justice of the peace is set to such certificate."

SECTION 14. Article 4 of Chapter 47 of the General Statutes is amended by adding the following new section to read:

"**§ 47-50.1. Register's certificate omitted.**

In all cases prior to October 1, 2004, where it appears from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly signed and acknowledged as required by the laws of this State, and the register of deeds has failed to certify the correctness of the acknowledgment as required by G.S. 47-14(a), the registrations are hereby validated and the instrument so appearing in the office of the register of deeds of that county is effective to the same extent as if the register of deeds had properly certified the correctness of the acknowledgment."

SECTION 15. G.S. 47-53.1 reads as rewritten:

"**§ 47-53.1. Acknowledgment omitting seal of clerk or notary public.**

Where any person has taken an acknowledgment as either a notary public or a clerk of a superior court, deputy clerk of a superior court, or assistant clerk of a superior court and has failed to affix his or her seal and ~~such~~ this acknowledgment has been otherwise duly probated and recorded then ~~such~~ this acknowledgment is hereby declared to be sufficient and ~~valid: Provided this shall apply~~ valid. This section applies only to those deeds and other instruments acknowledged prior to January 1, 1991."

SECTION 16. G.S. 55B-2(6) reads as rewritten:

"**§ 55B-2. Definitions.**

As used in this Chapter, the following words shall, unless the context requires otherwise, have the following meanings:

...

(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18C,

"Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," ~~and~~ Article 22, "Licensure Act for Speech and Language Pathologists and Audiologists," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to Certified [Licensed] Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act"."

SECTION 17.(a) G.S. 58-2-150 reads as rewritten:

"**§ 58-2-150. Oath required for compliance with law.**

Before issuing license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with him the affidavit of its president or other chief officer that ~~it has not violated any of the provisions of Articles 1 through 64 of this Chapter for the space of 12 months last past, and that~~ it accepts the terms and obligations of Articles 1 through 64 of this Chapter as a part of the consideration of the license."

SECTION 17.(b) G.S. 58-10-20(b) reads as rewritten:

"(b) This Part does not apply to:

...

(4) ~~Any~~ Except as provided in G.S. 58-10-45, any insurer subject to a judicial order of liquidation or rehabilitation.

...."

SECTION 17.(c) G.S. 58-21-65(b)(4) is repealed.

SECTION 17.(d) G.S. 58-22-20 reads as rewritten:

"**§ 58-22-20. Risk retention groups not chartered in this State.**

Risk retention groups that have been chartered in states other than this State and that seek to do business as risk retention groups in this state must observe and abide by the laws of this State as follows:

...

(4) Compliance With Unfair Claims Settlement Practices Law. – A risk retention group and its agents and representatives shall comply with ~~G.S. 58-3-100(5)~~ G.S. 58-3-100(a)(5) and G.S. 58-63-15(11).

...."

SECTION 17.(e) G.S. 58-33-82(e) reads as rewritten:

"(e) Commissions, fees, or other valuable consideration for the sale, solicitation, or negotiation of insurance may be assigned or directed to be paid in the following circumstances:

(1) To a business entity by a person who is an owner, shareholder, member, partner, director, employee, or agent of that business entity.

(2) To a producer in connection with renewals of insurance business originally sold by or through the licensed person or for other deferred commissions.

(3) In connection with the indirect receipt of commissions in circumstances in which a license is not required under ~~G.S. 58-33-26(m).~~G.S. 58-33-26(n)."

SECTION 17.(f) G.S. 58-36-90(e) reads as rewritten:

"(e) Indemnification. – An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or ~~insurance~~ credit scores for an insurer, provided the agent follows the instructions or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this subsection shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection."

SECTION 17.(g) G.S. 58-36-90(f) reads as rewritten:

"(f) Filing. – Insurers that use ~~insurance~~ credit scores to underwrite and rate risks shall file their scoring models, or other scoring processes, with the Department. A filing that includes ~~insurance~~ credit scoring may include loss experience justifying the applicable surcharge or credit. A filer may request that its credit score data be considered a trade secret and may designate parts of its filings accordingly."

SECTION 17.(h) G.S. 97-165(10) reads as rewritten:

"**§ 97-165. Definitions.**

As used in this Article:

...

(10) "Self-insurer" means ~~a single~~ an employer who retains liability under the Act and is licensed under this Article."

SECTION 18. G.S. 58-3-33(a) reads as rewritten:

"(a) A person who claims to have been physically injured or to have incurred property damage where such injury or damage is subject to a policy of nonfleet private passenger automobile insurance may request by certified mail directed to the insurance adjuster or to the insurance company (Attention Corporate Secretary) at its last known principal place of business that the insurance company provide information regarding the policy's limits of coverage under the applicable policy. Upon receipt of such a request, which shall include the policyholder's name, and, if available, policy number, the insurance company shall notify that person within 15 business days, on a form developed by the Department, that the insurer is required to provide this information prior to litigation only if the person seeking the information satisfies all of the following conditions:

(1) The person seeking the information submits to the insurer the person's written consent to all of the person's ~~physicians~~ medical providers to release to the insurer the person's medical records for the three years prior to the date on which the claim ~~arose.~~arose, as well as all medical records pertaining to the claimed injury.

...."

SECTION 19.(a) G.S. 58-85-1 reads as rewritten:

"**§ 58-85-1. Application of fund.**

The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of ~~firemen,~~ firemen and county fire marshals, who are members of ~~such~~ this Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as ~~firemen,~~ firemen or county fire marshals, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of ~~such~~ the firemen and county fire marshals killed or dying from disease so contracted in ~~such~~ the discharge of duty; to be paid in ~~such~~ the manner and in ~~such~~ the sums to ~~such~~ the individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of ~~said~~ the Association, and ~~such~~ any provisions and determinations made ~~pursuant to said~~ under the constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against ~~said~~ the Association to enforce any claim or recover any benefit under this Article or under the constitution and bylaws of ~~said~~ the Association; but if any officer or committee of ~~said~~ the Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against ~~said~~ that officer or committee to compel him or them to perform ~~such~~ that duty. No fireman or county fire marshal shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town ~~shall have~~ has been exhausted. Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to grant educational scholarships to members and the children of members, to subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association, and to provide accidental death and dismemberment insurance for members of those fire departments not eligible for benefits pursuant to standards of certification adopted by the State Firemen's Association for the use of local relief funds."

SECTION 19.(b) G.S. 58-85-15 reads as rewritten:

"**§ 58-85-15. Who shall participate in the fund.**

The line of duty entitling one to participate in the fund shall be so construed as to mean actual fire duty only, and any actual duty connected with the fire department or county fire marshal office when directed to perform the same by an officer in charge."

SECTION 19.(c) G.S. 58-85-20 reads as rewritten:

"**§ 58-85-20. Who may become members.**

Any organized fire company in North Carolina, holding itself ready for duty, may, upon compliance with the requirements of ~~said~~ its constitution and bylaws, become a member of the North Carolina State Firemen's Association, and any fireman of good moral character in North Carolina, and belonging to an organized fire company, who ~~will comply~~ complies with the requirements of the constitution and bylaws of the North Carolina State Firemen's Association, may become a member of ~~said~~ the Association. Any county fire marshal office may, upon compliance with the requirements of its constitution and bylaws, become a member of the North Carolina Firemen's Association, and any employee of a county fire marshal office of good moral character

whose sole duty is to act as a fire marshal, deputy fire marshal, assistant fire marshal, or firefighter of the county, who complies with the requirements of its constitution and bylaws, may become a member of the North Carolina Firemen's Association."

SECTION 19.(d) G.S. 58-85-25 reads as rewritten:

"**§ 58-85-25. Applied to members of regular fire company.**

~~The provisions of~~ G.S. 58-85-1, 58-85-10, 58-85-15, 58-85-20, and 58-85-25 shall apply to any fireman or fire marshal who is a member of a regularly organized fire ~~company,~~ company or county fire marshal office, and is a member in good standing of the North Carolina State Firemen's Association."

SECTION 20. G.S. 62-82(a) reads as rewritten:

"(a) Notice of Application for Certificate for Generating Facility; Hearing; Briefs and Oral Arguments. – Whenever there is filed with the Commission an application for a certificate of public convenience and necessity for the construction of a facility for the generation of electricity under G.S. 62-110.1, the Commission shall require the applicant to publish a notice thereof once a week for four successive weeks in a daily newspaper of general circulation in the county where such facility is proposed to be constructed and thereafter the Commission upon complaint shall, or upon its own initiative may, upon reasonable notice, enter upon a hearing to determine whether such certificate shall be awarded. Any such hearing must be commenced by the Commission not later than three months after the filing of such application, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions, except rate proceedings referred to in G.S. 62-81. Such applications shall be heard as provided in G.S. 62-60.1, and the Commission shall furnish a transcript of evidence and testimony submitted by the end of the second business day after the taking of each day of testimony. The Commission or panel shall require that briefs and oral arguments in such cases be submitted within 30 days after the conclusion of the hearing, and the Commission or panel shall render its decision in such cases within 60 days after submission of such briefs and arguments. If the Commission or panel does not, upon its own initiative, order a hearing and does not receive a complaint within 10 days after the last day of publication of the notice, the Commission or panel shall enter an order awarding the certificate. Notwithstanding this section, applicants for a certificate for solar photovoltaic facilities of 10 kilowatts or less are exempt from the requirement to publish public notice in newspapers."

SECTION 21. G.S. 66-27.1(a) reads as rewritten:

"(a) No individual, firm, corporation or business shall install, sell or offer for sale any automatic hot water tank or heater of 120-gallon capacity or ~~less~~ less, except for a tankless water heater, which does not have installed thereon by the manufacturer of ~~such~~ the tank or heater an American Society of Mechanical Engineers and National Board of Boiler and Pressure Vessel Inspectors approved type pressure-temperature relief valve set at or below the safe working pressure of the tank as indicated, and so labeled by the manufacturer's identification stamped or cast upon the tank or heater or upon a plate secured to it."

SECTION 22.(a) G.S. 90-171.21(d) reads as rewritten:

"(d) Qualifications. – Of the eight registered nurse members on the Board, one shall be a nurse administrator employed by a hospital or a hospital system, who shall be accountable for the administration of nursing services and not directly involved in patient care; one shall be an individual who meets the requirements to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist, or a nurse practitioner; two shall be staff nurses, defined as individuals who are primarily involved in direct patient care regardless of practice setting; one shall be an at-large registered nurse who meets the requirements of sub-subdivisions (1)a., a1., and b. of this subsection, but is not currently an educator in a program leading to licensure or any other degree-granting program; and three shall be nurse educators. Minimum ongoing employment requirements for every registered nurse and licensed practical nurse shall include continuous employment equal to or greater than fifty percent (50%) of a full-time position that meets the criteria for the specified Board member position. Of the three nurse educators, one shall be a practical nurse educator, one shall be an associate degree or diploma nurse educator, and one shall be a baccalaureate or higher degree nurse educator. All nurse educators shall meet the minimum education requirement as established by the Board's education program standards for nurse faculty. Candidates eligible for election to the Board as nurse educators are not eligible for election as the at-large member.

(1) Except for the at-large member, every registered nurse member shall meet the following criteria:
   a. Hold a current, unencumbered license to practice as a registered nurse in North Carolina.
   a1. Be a resident of North Carolina.
   b. Have a minimum of five years of experience as a registered nurse.
   c. Have been engaged continuously in a position that meets the criteria for the specified Board position for at least three years immediately preceding election.
   d. Show evidence that the employer of the registered nurse is aware that the nurse intends to serve on the Board.

(2) Every licensed practical nurse member shall meet the following criteria:
   a. Hold a current, unencumbered license to practice as a licensed practical nurse in North Carolina.
   a1. Be a resident of North Carolina.
   c. Have a minimum of five years of experience as a licensed practical nurse.
   d. Have been engaged continuously in the position of a licensed practical nurse for at least three years immediately preceding election.
   e. Show evidence that the employer of the licensed practical nurse is aware that the nurse intends to serve on the Board.

(3) A public member shall not be a provider of health services, employed in the health services field, or hold a vested interest at any level in the provision of health services as defined by the North Carolina Board of Ethics. No public member or person in the public member's immediate family as defined by G.S. 90-405(8) shall be currently employed as a licensed nurse or been previously employed as a licensed nurse.

(4) The nurse practitioner, nurse anesthetist, nurse midwife, or clinical nurse specialist member shall be recognized by the Board as a registered nurse who meets the following criteria:

a. Has graduated from or completed a graduate level advanced practice nursing education program accredited by a national accrediting body.

b. Maintains current certification or recertification from a national credentialing body approved by the Board or meets other requirements established by rules adopted by the Board.

c. Practices in a manner consistent with rules adopted by the Board and other applicable law."

SECTION 22.(b) This section is effective when it becomes law and applies to members elected to the Board on or after January 1, 2005.

SECTION 23. G.S. 114-19.50, Article VI. Establishment of Compact Council., subsection (b)(3), reads as rewritten:

"(b) The council must be composed of 15 members, each of whom must be appointed by the Attorney General, as follows:

...

(3) Two at-large members, nominated by the chair of the council once the chair is elected pursuant to ~~subsection (c)(3)~~subsection (c) of this Article VI, each of whom shall serve a three-year term, of whom:

a. One must be a representative of state or local criminal justice agencies; and

b. One must be a representative of state or local noncriminal justice agencies;

...."

SECTION 24.(a) G.S. 115C-522(a) reads as rewritten:

"(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment, and materials, and these purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate

funds are available to pay in the current fiscal year the sums obligated for the current fiscal year. The State Board of Education shall adopt rules regarding equipment standards for supplies, equipment, and materials related to student transportation. The State Board may adopt guidelines for any commodity that needs safety features. If a commodity that needs safety features is available on statewide term contract, any guidelines adopted by the State Board must at a minimum meet the safety standards of the statewide term contract. Compliance with Article 8 of Chapter 143 of the General Statutes is not mandatory for the purchase of published books, manuscripts, maps, pamphlets, and periodicals.

(1) Where competition is available, local school administrative units may utilize the:

a. E-Quote service of the NC E-Procurement system as one means of solicitation in seeking informal bids for purchases subject to the bidding requirements of G.S. 143-131; and

b. Division of Purchase and Contract's electronic Interactive Purchasing System as one means of advertising formal bids on purchases subject to the bidding requirements of G.S. 143-129 and applicable rules regarding advertising. This sub-subdivision does not prohibit a local school administrative unit from using other methods of advertising.

(2) In order to provide an efficient transition of purchasing procedures, the Secretary of the Department of Administration and the local school administrative units shall establish a local school administrative unit purchasing user group. The user group shall be comprised of a proportionate number of representatives from the Department of Administration and local school administrative unit purchasing and finance officers. The user group shall examine any issues that may arise between the Department of Administration and local school administrative units, including the new relationship between the Department and the local school administrative units, the appropriate exchange of information, the continued efficient use of E-Procurement, appropriate bid procedures, and any other technical assistance that may be necessary for the purchase of supplies and materials."

SECTION 24.(b) This section becomes effective April 1, 2004.

SECTION 25.(a) G.S. 115C-549 reads as rewritten:

"**§ 115C-549. Standardized testing requirements.**

Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the

testing, all records shall be made available, subject to ~~the provision of G.S. 115C-196,~~ G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina."

SECTION 25.(b) G.S. 115C-550 reads as rewritten:

"**§ 115C-550. High school competency testing.**

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each private church school or school of religious charter shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to ~~the provision of G.S. 115C-196,~~ G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina."

SECTION 25.(c) G.S. 115C-557 reads as rewritten:

"**§ 115C-557. Standardized testing requirements.**

Each qualified nonpublic school shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to ~~the provision of G.S. 115C-196,~~ G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina."

SECTION 25.(d) G.S. 115C-558 reads as rewritten:

"**§ 115C-558. High school competency testing.**

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each qualified nonpublic school shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each qualified nonpublic school shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to ~~the provision of G.S. 115C-196,~~ G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina."

SECTION 26.(a) G.S. 120-85 reads as rewritten:

"**§ 120-85. Definitions.**

As used in this Article:

(1) "Business with which ~~he is~~ associated" means any enterprise, incorporated or otherwise, doing business in the State of which ~~the legislator~~ the person or any member of ~~his~~ the person's immediate household is a director, officer, owner, partner, employee, or of which the ~~legislator~~ person and ~~his~~ the person's immediate household, either singularly or collectively, is a holder of securities worth five thousand dollars ($5,000) or more at fair market value as of December 31 of the preceding year, or constituting five percent (5%) or more of the outstanding stock of ~~such~~ the enterprise.

(1a) "Economic interest" includes matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(2) "Immediate household" means the ~~legislator, his~~ person, the person's spouse, and all of the person's dependent ~~children of the legislator.~~ children.

(2a) "Nonprofit corporation or organization with which associated" means any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate household is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(3) "Vested trust" as set forth in G.S. 120-96(4) means any trust, annuity or other funds held by a trustee or other third party for the benefit of the ~~member~~ person or a member of ~~his~~ the person's immediate household."

SECTION 26.(b) G.S. 120-87 reads as rewritten:

"**§ 120-87. Disclosure of confidential information.**

(a) No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of ~~his~~ the legislator's official position ~~or activities in any way~~ that could result in financial gain ~~for himself,~~ for: (i) the legislator; (ii) a business with which ~~he~~ the legislator is ~~associated or~~ associated; (iii) a nonprofit corporation or organization with which the legislator is associated; (iv) a member of ~~his~~ the legislator's immediate ~~household~~ household; or (v) any other person.

(b) As used in this section, "confidential information" means information defined as confidential by statute."

SECTION 26.(c) G.S. 120-96 reads as rewritten:

"**§ 120-96. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Committee, and the person filing the statement shall supply all of the following information:

(1) The identity, by name, of ~~any business~~ all businesses, nonprofit corporations or organizations with which ~~he, or any member of his immediate household, is associated;~~ the person is associated.

(2) The character and location of all real estate of a fair market value ~~in excess~~ of more than five thousand dollars ($5,000), other than ~~his~~ the person's personal residence (curtilage), in the State in which ~~he,~~ the person, or a member of ~~his~~ the person's immediate household, has any beneficial interest, including an option to buy and a lease for 10 years or ~~over;~~ more.

(3) The type of each creditor to whom ~~he,~~ the person, or a member of ~~his~~ the person's immediate household, owes ~~money,~~ more than five thousand dollars ($5,000), except indebtedness secured by lien upon ~~his~~ the person's personal residence ~~only, in excess of five thousand dollars ($5,000);~~ only.

(4) The name of each "vested trust" in which ~~he~~ the person or a member of ~~his~~ the person 's immediate household has a financial interest ~~in excess~~ of more than five thousand dollars ($5,000) and the nature of ~~such interest;~~ the interest.

(5) The name and nature of ~~his~~ the person and ~~his~~ the person's immediate household member's respective business or profession or employer and the types of customers and types of clientele ~~served;~~ served.

(6) A list of businesses with which ~~he~~ the person is associated that do business with the State, and a brief description of the nature of ~~such business; and~~ the business.

(6a) A list of nonprofit corporations or organizations with which the person is associated and which receive State funds, and a brief description of the nature of the programs receiving funds.

(7) In the case of ~~professional persons and associations,~~ a person who practices a profession, whether individually or as a member of a professional association, a list of ~~classifications of business clients~~ clients, by the type of business, whom the person or the person's firm or partnership has ~~which classes were~~ charged or who have paid to the person or the person's firm or partnership two thousand five hundred dollars ($2,500) or more for professional services rendered during the previous calendar ~~year for professional services rendered by him, his firm or partnership.~~ year. This list need not include the name of the client but shall list the type of the business of each such client or class of client, and brief description of the nature of the services rendered.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the signature date."

SECTION 26.(d) G.S. 120-99 reads as rewritten:

"**§ 120-99. Creation; composition.**

(a) The Legislative Ethics Committee is created to consist of ten members, five Senators appointed by the President Pro Tempore of the Senate, among them – two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and five members of the House of Representatives appointed by the Speaker of the House, among them – two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. However, a cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee."

SECTION 26.(e) G.S. 120-100 reads as rewritten:

"**§ 120-100. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly.

(b) A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 26.(f) Subsections (a), (b) and (c) of this section are effective January 1, 2006, and apply to candidates running for office on or after that date, to

persons appointed to fill vacancies for the 2007 and subsequent General Assemblies, and to presiding officers of the 2007 and subsequent General Assemblies. The remainder of this section is effective when it becomes law.

SECTION 27.(a) G.S. 135-1(25) reads as rewritten:

"(25) "Teacher" shall mean any teacher, helping teacher, ~~classroom~~ teacher in a job-sharing position ~~as defined in G.S. 115C-302.2(b)~~ under G.S. 115C-326.5 except for a beneficiary in that position, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee except for a ~~classroom~~ teacher in a job-sharing position, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt, the Board of Trustees, hereinbefore defined, shall determine whether any person is a teacher as defined in this Chapter. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "teacher" solely because the person holds a temporary or time-limited visa. Notwithstanding the foregoing, the term "teacher" shall not include any nonimmigrant alien employed in elementary or secondary public schools (whether employed in a full-time, part-time, temporary, permanent, or substitute teacher position) and participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62."

SECTION 27.(b) G.S. 135-40.2(a2) reads as rewritten:

"(a2) A school employee in a job-sharing position as defined in ~~G.S. 115C-302.2(b)~~ G.S. 115C-326.5(b) shall be eligible for coverage under the Plan, on a partially contributory basis, subject to the provisions of G.S. 135-40.3. If these employees elect to participate in the Plan, the employing unit shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual employees shall pay the balance of the total noncontributory premiums not paid by the employing unit."

SECTION 28. G.S. 143-34.1(d) reads as rewritten:

"(d) Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget is authorized to provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not ~~include those~~ replace, substitute for, or duplicate any benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3,

4, and 6 of Chapter 135 of the General ~~Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation.~~ Statutes. The plan may, however, include offerings for products and benefits that are supplemental or additional to these statutory benefits. In providing a plan of flexible compensation, the Director of the Budget may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

SECTION 29.(a) Part 3 of Article 3A of Chapter 143 of the General Statutes is repealed.

SECTION 29.(b) G.S. 143-129.8(b) reads as rewritten:

"(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with ~~G.S. 143-129(a)~~G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals."

SECTION 30.(a) Article 9 of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-143.5. Access to toilets in shopping malls.**

Notwithstanding any other law or rule, a horizontal travel distance of 300 feet for access to public use toilets in shopping malls shall be allowed."

SECTION 30.(b) This section is effective when it becomes law and applies to shopping malls for which building permits are issued on or before July 1, 2005. This section expires July 1, 2005.

SECTION 31.(a) G.S. 157-9 is amended by adding the following new subsection to read:

"(d) A housing authority shall not erect or maintain around any lawfully occupied housing units any fence or gate structure that is electrified or that includes spikes or barbed wire."

SECTION 31.(b) This section is effective when it becomes law and applies to existing fences and gates.

SECTION 32.(a) G.S. 160A-361 reads as rewritten:

"**§ 160A-361. Planning ~~agency.~~boards.**

(a) Any city may by ordinance create or designate one or more ~~agencies~~ boards or commissions to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the council concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
(7) Perform any other related duties that the council may direct.

(b) ~~An agency~~ A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:
(1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter."

SECTION 32.(b) G.S. 160A-363 reads as rewritten:

"**§ 160A-363. Supplemental powers.**

A city or its designated planning ~~agency~~ board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning ~~agency~~ board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

Any city, or its designated planning ~~agency~~ board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning ~~agency~~ board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning ~~agency~~ board for technical planning assistance.

Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning ~~agency~~ board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense."

SECTION 32.(c) G.S. 153A-321 reads as rewritten:

"**§ 153A-321. Planning ~~agency.~~boards.**

A county may by ordinance create or designate one or more ~~agencies~~ boards or commissions to perform the following duties:

(1) Make studies of the county and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;

(7) Perform any other related duties that the board of commissioners may direct.

~~An agency~~ A board or commission created or designated pursuant to this section may include but shall not be limited to one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;

(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1."

SECTION 32.(d) G.S. 153A-322 reads as rewritten:

"**§ 153A-322. Supplemental powers.**

A county or its designated planning ~~agency~~ board may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning ~~agency~~ board with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

A county, or its designated planning ~~agency~~ board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning ~~agency~~ board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning ~~agency~~ board under which it agrees to pay the other local government or planning ~~agency~~ board for technical planning assistance.

A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A,

Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article."

SECTION 32.(e) G.S. 160A-392 reads as rewritten:

"**§ 160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.**

All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings and land by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within ~~an overlay district or a special use or~~ conditional ~~use~~ district without approval of the Council of ~~State.~~State or its designate."

SECTION 32.(f) This section becomes effective October 1, 2004.

SECTION 33. The introductory language of subsection (b) of Section 2 of S.L.1997-41, as amended by S.L. 1998-19, S.L. 2001-318, S.L. 2003-55, and S.L. 2003-260 is rewritten to read:

"(b) The Board of the North Carolina Indian Cultural Center, Inc., shall consist of 20 members, appointed as follows:"

SECTION 34.(a) The lead-in language of Section 1 of S.L. 2003-392 is rewritten to read:

"**SECTION 1.** G.S. 153A-225 is amended by adding the following new subsection to read:"

SECTION 34.(b) This section becomes effective August 7, 2003.

SECTION 35. If House Bill 142, 2003 Regular Session, becomes law, then Section 2.1 of that act reads as rewritten:

"**SECTION 2.1.** Privilege tax. – Notwithstanding the provisions of G.S. 153A-152, the Dare County Board of Commissioners may levy a privilege tax of up to three hundred dollars ($300.00) per ~~rental unit~~establishment on each business engaged in the furnishing of any room, lodging, or accommodation within the county the rental of which is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax does not apply to nonprofit charitable, educational, or religious organizations that furnish accommodations in furtherance of their nonprofit purpose. For the purposes of this act, "establishment" has the same meaning as in G.S. 105-129.2."

SECTION 36. If House Bill 1414, 2003 Regular Session, becomes law, then Section 7.22(a) of House Bill 1414 reads as rewritten:

"**HIGH SCHOOL WORKFORCE DEVELOPMENT PROGRAM**

SECTION 7.22.(a) Funds are appropriated in this act for a high school workforce development program. The purpose of the program shall be to identify students who may not plan to attend or be adequately prepared to attend a two- or four-year degree program and to provide the assistance those students need to earn an Associate Degree the year after their senior year in high school. The Department of Public Instruction shall work closely with the Education Cabinet and the New Schools Project in administering the program.

These funds shall be used to establish five pilot projects in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and community college curricula operate seamlessly and meet the needs of participating employers. Notwithstanding any other law or rule, a local school administrative unit and two- and four-year colleges and universities shall agree upon the minimum age of the students who participate in the pilot projects."

SECTION 37. If Section 8.17 of House Bill 1414, 2003 Regular Session, becomes law, then a new subsection is added to read:

"**SECTION 8.17.(c)** No request for proposals need be issued for any contract under subdivision (a)(2) of this section."

SECTION 38. If Senate Bill 582, 2003 Regular Session, becomes law, G.S. 130A-475(b), as enacted by that law, reads as rewritten:

"(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute, in superior court in Wake County or in the county in which the limitation is imposed, an action to review the limitation. The State Health Director shall give the persons known by the State Health Director to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical or nuclear agents to others, and may apply such conditions to the limitation as the court deems reasonable and necessary.

If the State Health Director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director must institute in superior court in the county in which the limitation is imposed, an action to obtain an order extending the period limiting the freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must

institute the action in superior court in Wake County or as a counterclaim in the pending case. The court shall continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable and necessary, if it determines by the preponderance of the evidence, that additional limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical, or nuclear agents to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the ~~quarantine or isolation~~ limitation on freedom of movement or access is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that ~~quarantine or isolation~~ the limitation on freedom of movement or access was not or is no longer needed for protection of the public health, the person ~~quarantined or isolated~~ so limited may move the trial court to reconsider its order extending ~~quarantine or isolation~~ the limitation on freedom of movement or access before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each."

SECTION 39. The Department of Transportation shall install highway directional guide signs at the freeway ramp terminals for colleges or universities with a campus located in North Carolina if the campus is within one mile from the freeway ramp terminal, is licensed by the Board of Governors of The University of North Carolina, offers both undergraduate and graduate degree programs, and has a minimum of 350 students enrolled at the campus. The college or university requesting the sign installment shall pay for all charges related to the construction of the sign.

SECTION 40. This act is effective when it becomes law.

SENATE BILL 1225:
2004 Technical Corrections Act.

BILL ANALYSIS

Committee:	**Senate Judiciary I**	**Introduced by:**	Sen. Hartsell
Date:	**July 9, 2004**	**Summary by:**	Robin Johnson
Version:	**S1225-CSRH-71[v.13]**		Walker Reagan
			Staff Attorneys

SUMMARY: The Proposed Committee Substitute for Senate Bill 1225 makes technical corrections and other changes to various statutes and session laws. Part I of the PCS (Sections 1 through 4) were recommended by the General Statutes Commission and are summarized in a separate document by the Commission's staff. This summary will cover Part II (all remaining sections of the PCS), which contains changes identified by legislative staff, agency staff, and others.

BILL ANALYSIS:

Sections 1-4. Pages 1-5.

- Please see the separate summary (attached) on these sections, which are recommended by the General Statutes Commission.

Section 5. – Page 5.

- Amends G.S. 1A-1, Rule 5(d) of the Rules of Civil Procedure to except from court filing requirements in civil actions subpoenas and objections to subpoenas. Changes made in 2003 expanding notice requirements to parties in civil actions inadvertently required certain documents to be filed in the court file.

Section 6. Page 5.

- Amends G.S. 10A-16(d) , the notary public curative statute, by extending from March 1, 2003 to February 1, 2004 the validation of certain defective notarial acts performed by statutorily curing the defects.

Section 7. – Pages 5–6.

- Amends G.S. 14-33(d) clarifies and conforms the sentencing language for certain serious assaults to the punishment level specified for those offenses in subsection (c) of the same statute.

Section 8. Page 6.

- Amends G.S. 18B-101(7a) expands the definition of a historic ABC establishment to include restaurants and hotels in a State historic district in addition to being on the national historic register. This would permit a restaurant at Mast Inn in Watauga County to get ABC permits.

Section 9. Page 6.

- Amends G.S. 18B-103 to allow the delivery, possession, or consumption of alcoholic beverages by persons less than age 21 when under the direct supervision of an instructor in a class that is part of established curriculum at an accredited college or university.

Section 10. – Pages 6-7.

- Amends G.S. 18B-1006(m)(2) to correct a repealed reference to a statute intended to permit ABC permits to be issued for certain establishments located within a mile of an interstate highway, within a mile of a residential private club or sports club. This amendment further restricts the application of this provision to a 70 or more bed hotel or an establishment located with ¼ mile of such a hotel.

Section 11. – Page 7.

- Amends G.S. 18B-1104(7) governing breweries to eliminate from the calculation of the maximum barrels of malt beverages a brewery can sell on-premises, to wholesalers, to retailers and to exports malt beverages sold to wholesalers. This will allow more sales to wholesalers and will allow breweries that sell large amounts of malt beverages to wholesalers to also sell to customers on premises and to sell as a wholesaler.

Section 12. – Page 7.

- Amends G.S. 19A-24(1) of the Department of Agriculture laws to clarify that dog day care facilities are not subject to regulations applicable to boarding kennels with respect to separate runs for the dogs, so long as the dogs are not boarded overnight.

Section 13. – Page 7-8.

- Amends G.S. 20-16.1(b) to allow district court judges instead resident superior court judges to issue limited driving privileges to persons whose drivers licenses are suspended in NC for an out-of-state speeding violation of more than 15 miles per hour about the speed limit and in excess of 55 , or in excess of 80 miles per hour.
- Amends G.S. 97-10.2(j) (Workers' Compensation – third party liability) to delete "before whom the cause of action is pending" and add "in the district".

Section 14. – Pages 7-8.

- Amends G.S. 20-119 to provide that a law enforcement officer cannot issue a citation to a person for failing to have in the person's possession a special permit for vehicles of excessive size and weight if the officer is able to determine that the person has been issued a valid permit and the person submits the permit within 30 days of the violation.

Section 15. – Page 8.

- Amends G.S. 20-179.4 (community service program) to make conforming changes to the law changed in 2001 transferring this program from Department of Crime Control and Public Safety to the Department of Corrections.

Section 16. – Pages 9.

- Amends G.S. 47-2 by adding associate consuls and other persons authorized by federal law to acknowledge documents as Consular officers as a notary would to conform to changes in federal law that defines persons in US Consulates who are authorized to acknowledge deeds and other documents requiring a sworn acknowledgement.

Section 17. – Pages 10.

- Amends Article 4 of Chapter 47 to create a new curative statute to make registrations in the Register of Deeds offices valid to the same extent as if the register of deeds had properly certified the correctness of the notary acknowledgement when the document was otherwise legally acknowledged.

Section 18. – Page 10.

- Amends G.S. 47-53.1 to add clerks of courts to the curative statute that declares acknowledgments that are otherwise duly probated and recorded to be valid notwithstanding the fact that the seal of the person taking the acknowledgement is omitted. Applies to acknowledgments before January 1, 1991.

Section 19. – Page 10.

- Amends G.S. 55B-2(6) to add Speech and Language Pathologists and Audiologists to the list of persons who may form as professional corporations or professional limited liability companies (LLC's).

Section 20. – Pages 11-12.

- Requested by the Department of Insurance.
- Amends G.S. 58-2-150 to make a conforming amendment due to statutory change last year in G.S. 58-6-15.
- Amends G.S. 58-10-20(b) to eliminate an internal conflict within Part 2 of Article 10.
- Amends G.S. 58-22-20 to correct a statutory citation.
- Amends G.S. 58-33-82(e) to correct a statutory citation.
- Amends G.S. 58-36-90(e) and (f) to correct incorrect terminology inadvertently included in S.L. 2003-216.
- Amends G.S. 97-165 to correct a statutory error recently discovered in order to conform statute to original intent of Department of Insurance and to longstanding policy.

Section 21. – Page 12.

- Amends G.S. 58-3-33 to clarify that insurance companies may obtain all medical records from all medical providers (not just the claimant's physician) relating to a current auto insurance claim.

Section 22. – Pages 12-13.

- Amends G.S. 58-85-1, 58-85-15, 58-85-20, and 58-85-25, to add county fire marshals to the Firemen's Relief Fund.

Section 23. – Pages 13-14.

- Amends G.S. 62-82(a) of the Utilities laws by exempting applicants for a certificate for solar photovoltaic facilities of no more than 10 kilowatts from the requirement that they must first publish public notice in newspapers. These are facilities that will generate electricity.

Section 24. – Page 14.

- Amends G.S. 66-27.1(a) to exempt tankless water heaters from the requirement that water heaters have manufacturer-installed pressure valves. (Apparently it is either impossible or very difficult and expensive to install pressure valves on tankless water heaters, which might not have been in existence when the statute was enacted in the mid-1960's.)

Section 25. – Page 14-16.

- Amends the law defining qualifications for the Board of Nursing to restore a requirement that registered nurses and licensed practical nurses appointed to the Board of Nursing must be employed at least half–time in the specialty for the position for which they fill on the Board while serving on the Board. This provision was inadvertently omitted from a rewriting of the Board of Nursing laws last year.

Section 26. – Page 16.

- Amends G.S. 114-19.50) which adopts the National Crime Prevention and Privacy Compact for NC, to correct an incorrect citation in the compact.

Section 27. – Pages 16-17.

- Amends G.S. 115C-522(a) by exempting local boards of education from the requirement that they comply with formal bidding procedures for the purchase of published books, manuscripts, maps, pamphlets, and periodicals. This section is effective retroactively to April 1, 2004.

Section 28. – Pages 17-18.

- Amends several educational testing statutes to correct references to a repealed statute.

Section 29. – Pages 18-21.

- Amends Legislative Ethics Act to require disclosures of associations with nonprofit corporations and organizations.
- Amends G.S. 120-85 to add to the definition of economic interest matters involving a nonprofit corporation or organization with which the person is associated.
- Amends G.S. 120-87 to prohibit a legislator from using or disclosing confidential information gained in the course of the legislator's official activities or by reason of legislator's official position in any way that can result in financial gain for a nonprofit corporation or organization with which the legislator is associated. It defines "confidential information" as information confidential by statute.
- Amends G.S. 120-96 to require statement of economic interest to include a list of nonprofits with which the person is associated and which receive State funds, and a brief description of the nature of the programs receiving these funds.
- These provisions are effective January 1, 2006, and applies to candidates running for office on or after that date, to persons appointed to fill vacancies beginning with the 2007 General Assembly, and to presiding officers beginning with the 2007 General Assembly.
- Also amends G.S. 120-99 and 120-100 to provide for designation of a substitute cochair or substitute members, or both, of the Legislative Ethics Committee, when a cochair is unable to act as a cochair on a specific matter or when a member is unable to act on a specific matter, or both.

Section 30. – Page 21.

- Amends G.S. 130A-248(a3) to permit dogs in outdoor eating areas of restaurants.

Section 31. – Pages 21-22.

- Amends G.S. 135-1(25) and G.S. 135-40.2(a2) in the State Retirement System law to correct two statutory references to job sharing arrangements by teachers.

Section 32. – Pages 22-23.

- Amends G.S. 143-34.1 to clarify the authority of the NC-Flex plan to offer supplemental products that supplement, but not replace or substitute for, benefits already provided by the State.

Section 33. – Page 23-24

- Adds a new section to Article 3 of Chapter 143 – State Purchase and Contract, to require the Department of Administration to award State ammunition requirement contracts to at least 3 qualified vendors and require the Department to expand the number of qualified vendors up to 6 if necessary to include a NC manufacturer. Contracts could include both new manufactured as well as remanufactured ammunition and would prohibit bids for only name brand ammunition. This provision mirrors the recent changes made in State furniture requirement contracts.

Section 34. - Page 24.

- Repeals Part 3 of Article 3A of Chapter 143 because this statute is redundant because electronic auction of surplus property by counties and cities is already provided for in G.S. 160A-270(c).
- Amends G.S. 143-129.8(b) to correct a statutory reference.

Section 35. – Page 24.

- Amends the Building Code Council and Building Code law by adding a new G.S. 143-143.5 that would conform the State codes applicable to shopping malls to the international standard of 300 feet for access to public use toilets in those malls. This section would apply for construction where building permits were issued on or before July 1, 2005 and the statute would expire on July 1, 2005.

Section 36. – Page 24.

- Amends G.S. 157-9 by adding a new subsection that would prohibit local housing authorities from building or maintaining a gate or fence that is electrified or has barbed wire and is around a lawfully occupied housing unit. The provision would apply to existing fences and gates. A housing authority, generally, is a unit of local government created to provide public housing.

Section 37. – Pages 24-27.

- Amends local government planning authority statutes by change the phrase "planning agency" to "planning board or commission".
- Amends G.S. 160A-392 to make the provisions of the local governments planning and regulation of development applicable to the use of State lands in addition to State buildings.

Section 38. – Page 27.

- Amends G.S. 163-278.12(a) to remove a cross-reference to a statute that was repealed.

Section 39. – Page 27.

- Amends introductory language so that total number of members is the same as actual members listed in the statute.

Section 40. – Page 27.

- Corrects a statutory citation in S.L. 2003-392, effective when that law took effect – August 7, 2003.

Section 41. – Page 27.

- Exempts the operation and development of a military business center for Fayetteville Community College from the contract bidding requirements under the purchase and contracts laws if the center is authorized in HB 1414 (2004 Appropriations Act).

Section 42. – Pages 27-28.

- If Senate Bill 582, which has been ratified and is awaiting the Governor's signature, becomes law, this section would conform the new language added to G.S. 130A-475 by that bill. Currently, G.S. 130A-475 uses the phrase "limitation on freedom of movement or access" – not "quarantine or isolation." Even though they mean similar things, quarantine and isolation generally apply to communicable diseases. G.S. 130A-475 addresses terrorist incidents using nuclear, biological or chemical agents.

Section 43. – Pages 28-29.

- If Senate Bill 991 (which would create a system for planning and financing the State's information technology resources) is enacted, this section would amend two new statutes by deleting the Administrative Office of the Courts from the requirements that (i) it must develop biennially an information technology

plan to be submitted to the State Chief Information Officer and (ii) the newly created Information Technology Advisory Board must review and comment on that technology plan.

Section 44. –Page 29.

- Directs the Department of Transportation to install highway directional signs at the exit ramp for a college or university with a campus in NC that is located within one mile of the ramp, is licensed by the UNC Board of Governors, offers both undergraduate and graduate programs, and has at least 350 enrolled students at the campus. Requires the college or university to pay for the installation of the signs.

Section 45. – Page 29.

EFFECTIVE DATE: Unless otherwise provided, the act is effective when it becomes law.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: July 2, 2004

RE: Senate Bill 1225 (2004 Technical Corrections Act)

General Comments

Part I of the proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments update outdated references and make conforming changes to various sections of the General Statutes.

Specific Comments

Sections 1 and 4. These sections make the same conforming change to G.S. 62-3(23)i. and G.S. 115C-102.5(e) to change the reference to the Office of the State Controller to a reference to the Office of Information Technology Services (ITS). The existing reference was placed into these provisions when ITS was located in the Office of the State Controller and was not updated when ITS was moved out of that Office.

Section 2. This section amends G.S. 111-52 to update a reference. The Office of the State Controller no longer has the "Administrative Policies and Procedures Manual" referenced in G.S. 111-52, although it has a collection of policies.

Section 3. This section makes a conforming amendment to G.S. 113-307.1(b) to change the reference to the federal Secretary of Agriculture to a reference to the federal Secretary of the Interior, which now has authority at the federal level over wildlife restoration projects.

Part I of the bill is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S1225-ARH-131 [v.1]

Date _____ ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71[V.13]

Senator Hoyle

moves to amend the bill on page 11, lines 15-16, by inserting between the lines the following new section:

"**SECTION 20.(c).** G.S. 58-21-65(b)(4) is repealed.";

And by re-lettering the remaining subsections of Section 20.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

S1225-ARU-86 [v.1]

Date 7-12 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71 [v.13]

Senator Albertson

moves to amend the bill on page 6, lines 7 through 24,
by deleting the lines; and

renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S1225-ARU-88 [v.1]

Date 7-12 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71 [v.13]

Senator RAND

moves to amend the bill on page 7, lines 5 through 13,
by deleting the lines; and

by renumbering the remaining sections accordingly.

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

S1225-ARU-87 [v.1]

Date 7-12 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71 [v. 13]

Senator RAND

moves to amend the bill on page 8, lines 9 through 17,
by deleting the lines; and

by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-12-04

S. B. No. 1225 Amendment No. 5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1225-CSRH-71[v.13]

Rep.)
Sen) RAND

1 moves to amend the bill on page 21, lines 36 through 43
2 ( ) WHICH CHANGES THE TITLE
3 by deleting Section 30 of the bill; and
4
5 by renumbering subsequent sections accordingly.
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-12-04

S. B. No. 1225 Amendment No. 6
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) RAND

moves to amend the bill on page 23 line 6 through page 24, line 2

( ) WHICH CHANGES THE TITLE

by deleting those lines and by renumbering the sections accordingly.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-12-04

S. B. No. 1225 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) FORD
Sen.)

1 moves to amend the bill on page 28, line 32 through page 29, line 9
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines ad renumbering
4 remaining sections accordingly.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 8
(to be filled in by
Principal Clerk)

S1225-ARU-91 [v.1]

Date M-12 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71 [v.13]

Senator Berger

moves to amend the bill on page 5, line 15,
by deleting the SECOND word "subpoenas," and substituting the words "subpoenas under Rule 45,".

(C)(3)

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-12-04

S. B. No. 1225 Amendment No. 9

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1225-CSRH-71 [v.13]

Rep.)
) _____
Sen.)

moves to amend the bill on page 27, line 5 4 through 11

( ) WHICH CHANGES THE TITLE

by deleting Section 38; and

by renumbering subsequent sections as the bill accordingly.

SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

GA-33rA

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 10
(to be filled in by
Principal Clerk)

S1225-ALY-76 [v.2]

Date 7-12 ,2004

Comm. Sub. [NO]
Amends Title [NO]

Senator RAND

moves to amend the bill on page _____, line ___, by adding the following:

"**SECTION** . If House Bill 142, 2003 General Assembly, becomes law, then Section 2.1 of that act reads as rewritten:

'**SECTION 2.1.** Privilege tax. – Notwithstanding the provisions of G.S. 153A-152, the Dare County Board of Commissioners may levy a privilege tax of up to three hundred dollars ($300.00) per ~~rental unit~~establishment on each business engaged in the furnishing of any room, lodging, or accommodation within the county the rental of which is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax does not apply to nonprofit charitable, educational, or religious organizations that furnish accommodations in furtherance of their nonprofit purpose. For the purposes of this act, 'establishment' has the same meaning as in G.S. 105-129.2.' "

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. [redacted]
(to be filled in by
Principal Clerk)

S1225-ARU-92 [v.1]

Date 7/12/04 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71 [v.13]

Senator Lucas

moves to amend the bill on page 29, lines 9 and 10,
by inserting the following new bill section between the lines to read:

"**SECTION 43.5.** If House Bill 1414, 2003 Regular Session, becomes law, then Section 7.22(a) of House Bill 1414, reads as rewritten:

"**HIGH SCHOOL WORKFORCE DEVELOPMENT PROGRAM**

SECTION 7.22.(a) Funds are appropriated in this act for a high school workforce development program. The purpose of the program shall be to identify students who may not plan to attend or be adequately prepared to attend a two- or four-year degree program and to provide the assistance those students need to earn an Associate Degree the year after their senior year in high school. The Department of Public Instruction shall work closely with the Education Cabinet and the New Schools Project in administering the program.

These funds shall be used to establish five pilot projects in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and community college curricula operate seamlessly and meet the needs of participating employers. Notwithstanding any other law or rule, a local school administrative unit and two- and four-year colleges and universities shall agree upon the minimum age of the students who participate in the pilot projects."".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 11
(to be filled in by
Principal Clerk)

S1225-ARU-92 [v.1]

SIGNED Jeanne Lucas
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 12
(to be filled in by Principal Clerk)

S1225-ARU-90 [v.1]

Date 7-12 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71 [v. 13]

Senator Hargett

moves to amend the bill on page 9, lines 2 and 3,
by inserting the following new bill section between the lines to read:

"**SECTION 15.5.** G.S. 35A-1251(23) reads as rewritten:

"(23) To create a trust for the benefit of the ward pursuant to 42 United States Code § 1396p(d)(4), provided that all amounts remaining in the trust upon the death of the ward, other than those amounts which must be paid to a state ~~government,~~government and those amounts retained by a non-profit association as set forth in 42 United States Code §1396p(d)(4)(C), are to be paid to the estate of the ward."

SIGNED Cecil Hargett
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOLD WITHDRAWN

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 13
(to be filled in by
Principal Clerk)

S1225-ARH-132 [v.1]

Date 7-12 ,2004

Comm. Sub. [YES]
Amends Title [NO]
S1225-CSRH-71[V.13]

Senator Soles

moves to amend the bill on page 7, line 35, through page 8, line 8, by rewriting the Section to read:

"**SECTION 15.(b)** G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action ~~arose,~~ arose or where the injured employee ~~resides or the~~ resides, or to a presiding judge ~~before whom the cause of action is pending,~~ of either district, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien, whether based on accrued or prospective workers' compensation benefits, and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable, in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1225*

AMENDMENT NO. 13
(to be filled in by
Principal Clerk)

S1225-ARH-132 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1225*

Short Title: 2004 Technical Corrections Act. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-402(c)(3) reads as rewritten:

"(c) The following definitions apply in this section:

...

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This ~~devise~~ device is mechanically held at full or partial draw and released by a trigger or similar mechanism ~~which~~ that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

..."

SECTION 2. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. – To obtain ~~a~~ an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's valid social security number.
(6) The applicant's signature.

If an applicant does not have a valid social security number and is ineligible to obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service to that person.

The Division shall not issue an identification card, learners permit, or drivers license to an applicant who fails to provide either the applicant's valid social security number or the applicant's valid Individual Taxpayer Identification Number."

SECTION 3. G.S. 49-13.1 is repealed.

SECTION 4. G.S. 55B-2(6), as amended by Section 3 of S.L. 2003-117, reads as rewritten:

"(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18C, "Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to ~~Certified~~ Licensed Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act."

SECTION 5.(a) G.S. 58-36-10(3) reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards shall apply to the making and use of rates:

...

(3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration

shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.

..."

SECTION 5.(b) G.S. 58-40-25(4) reads as rewritten:

"**§ 58-40-25. Rating methods.**

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

...

(4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply."

SECTION 5.(c) G.S. 58-87-1(b) reads as rewritten:

"(b) A fire department is eligible for a grant under this section if it meets all of the following conditions:

(1) It serves a response area of 6,000 or less in population.

(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.

(3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1) of this subsection, the Department shall use the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(d) G.S. 105-113.82(e) reads as rewritten:

"(e) Population Estimates. – To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(e) G.S. 105-129.3(b1) reads as rewritten:

"(b1) Data. – In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State ~~Planning~~ Budget Officer."

SECTION 5.(f) G.S. 105-129.3A(a) reads as rewritten:

"(a) Development Zone Defined. – A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce."

SECTION 5.(g) G.S. 105-164.44F(b) reads as rewritten:

"(b) Share of Cities Incorporated on or After January 1, 2001. – The share of a city incorporated on or after January 1, 2001, is its per capita share of the amount to be distributed to all cities incorporated on or after this date. This amount is the proportion of the total to be distributed under this section that is the same as the proportion of the population of cities incorporated on or after January 1, 2001, compared to the

population of all cities. In making the distribution under this subsection, the Secretary must use the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer."

SECTION 5.(h) G.S. 105-187.19(b) reads as rewritten:

"(b) Each quarter, the Secretary shall credit five percent (5%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty-seven percent (27%) of the net tax proceeds to the Scrap Tire Disposal Account. The Secretary shall distribute the remaining sixty-eight percent (68%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer."

SECTION 5.(i) G.S. 105-187.24 reads as rewritten:

"**§ 105-187.24. Use of tax proceeds.**

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State ~~Planning~~ Budget Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

SECTION 5.(j) Effective July 1, 2003, G.S. 105-472(b) reads as rewritten:

"(b) Distribution Between Counties and Cities. – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered

its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State ~~Planning~~ Budget Officer.

(2) Ad Valorem Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year."

SECTION 5.(k) G.S. 136-202(c) reads as rewritten:

"(c) The Department, the metropolitan planning organizations, and the Department of Environment and Natural Resources shall jointly evaluate and adjust the regions defined in each regional travel demand model at least once every five years and no later than October 1 of the year following each decennial federal census. The evaluation and adjustment shall be based on decennial census data and the most recent populations estimates certified by the State ~~Planning~~ Budget Officer. The adjustment of these boundaries shall reflect current and projected patterns of population, employment, travel, congestion, commuting, and public transportation use and the effects of these patterns on air quality."

SECTION 5.(l) G.S. 143-215.107A(d) reads as rewritten:

"(d) Additional Counties. – The Commission may require that motor vehicle emissions inspections be performed in counties in addition to those set out in subsection (c) of this section. In determining whether to require that motor vehicle emissions inspections be performed in a county, the Commission may consider the population of, and distribution of population in, the county; the projected change in population of, and distribution of population in, the county; the number of vehicles registered in the county; the projected change in the number of vehicles registered in the county; vehicle miles traveled in the county; the projected change in vehicle miles traveled in the county; current and projected commuting patterns in the county; and the current and projected impact of these factors on attainment of air quality standards in the county and in areas outside the county. The Commission may not require that motor vehicle emissions inspections be performed in any county with a population of less than 40,000 based on the most recent population estimates prepared by the State ~~Planning~~ Budget Officer. The Commission may not require that motor vehicle emissions inspections be performed in any county in which the number of vehicle miles traveled per day is less than 900,000, based on the most recent estimates prepared by the Department of Transportation. In order to disapprove a rule that requires that motor vehicle emissions inspections be performed in one or more additional counties, a bill introduced pursuant to G.S. 150B-21.3(b) must amend subsection (c) of this section to add one or more other counties in which the total population and vehicle miles traveled per day equal or exceed the total population and vehicle miles traveled in the county or counties listed in the rule that the bill would disapprove."

SECTION 5.(m) G.S. 160A-536(c) reads as rewritten:

"(c) Urban Area Revitalization Defined. – As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State ~~Planning~~ Budget Officer and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.

(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.

(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.

(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities."

SECTION 5.(n) G.S. 162A-6(a)(14d) reads as rewritten:

"(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority is authorized and empowered:

...

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision

applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State ~~Planning~~ Budget Officer.

..."

SECTION 6. G.S. 78A-17 reads as rewritten:

"**§ 78A-17. Exempt transactions.**

Except as otherwise provided in this Chapter, the following transactions are exempted from G.S. 78A-24 and G.S. 78A-49(d):

(1) Any isolated nonissuer transaction, whether effected through a dealer or ~~not;~~not.

(2) Any nonissuer distribution other than by a controlling person of an outstanding security if

a. A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

b. A registered dealer files with the Administrator such information relating to the issuer as the Administrator may by rule or order require, or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the ~~security;~~security.

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy; but the Administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the dealer for a specified ~~period;~~period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among ~~underwriters;~~underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a lien or security interest in real or personal property, or by an agreement for the sale of real estate or chattels, if the entire security interest or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a ~~unit;~~unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or ~~conservator;~~conservator.

(7) Any transaction executed by a person holding a bona fide security interest without any purpose of evading this ~~Chapter;~~Chapter.

(8) Any offer or sale to an entity which has a net worth in excess of one million dollars ($1,000,000) as determined by generally accepted accounting principles, bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary ~~capacity;~~capacity.

(9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security transaction. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required.

(10) Any offer or sale of a preorganizational certificate or subscription if: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; (ii) no public advertising or solicitation is used in connection with the offer or sale; (iii) the number of subscribers does not exceed 10 and the number of offerees does not exceed 25; and (iv) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or (ii) the issuer first files a notice specifying the terms of the offer and the Administrator does not by order disallow the exemption within the next 10 full business ~~days;~~days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this Chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either ~~act;~~act.

(13) Any offer or sale by a domestic entity of its own securities if (i) the entity was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (ii) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within

two miles of the boundaries thereof, by resolution of the governing body of such municipality, (iii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iv) the ~~corporation~~ entity is both organized and operated principally to promote some community, industrial, or agricultural development that confers a public benefit rather than organized and operated principally to generate a pecuniary ~~profit;~~profit.

(14) Any offer, sale or issuance of securities pursuant to an employees' stock or equity purchase, option, savings, pension, profit-sharing, or other similar benefit plan that is exempt under the provisions of ~~G.S. 78A-16(11);~~G.S. 78A-16(11).

..."

SECTION 7. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.

(3) A crime involving fraud or moral turpitude by conviction thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.

(5) False or misleading advertising.

(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, ~~adopted~~ or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation."

SECTION 8. G.S. 96-4(t)(2) reads as rewritten:

"(t) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government.

...

(2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Commission have agreed upon in writing. (ii) The Employment Service Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information Division shall collect, collate, and publish statistical and other information relating to the work under the Commission's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Commission's opinion may make further legislation desirable. (iv) Except as provided by Commission regulation, any information published pursuant to this ~~subsection (II)~~ subdivision shall not be published in any manner revealing the identity of the applicant or the employing unit.

..."

SECTION 9. G.S. 110-136.13(a) reads as rewritten:

"(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and ~~110-14,~~ 110-136.14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act."

SECTION 10. G.S. 113-307.1(b) reads as rewritten:

"(b) The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public Law 415, 75th Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of ~~Agriculture~~ the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Wildlife Resources Commission."

SECTION 11. G.S. 143-129.8(b) reads as rewritten:

"(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with ~~G.S. 143-129(a).~~G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals."

SECTION 12. G.S. 147-69 reads as rewritten:

"**§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.**

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon ~~his~~ the Auditor's request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in ~~his~~ the Treasurer's office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which ~~he~~ the Treasurer may deposit or cause to be deposited any of the public funds, and ~~such~~ these accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing ~~his~~ the Treasurer's official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing ~~his~~ the Treasurer's signature to warrants, checks or any other instrument ~~he~~ the Treasurer is required by law to sign. The Commissioner of ~~Banks and~~ Banks, the bank examiners, and ~~the Commissioner of Banks and~~ the savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all ~~such~~ these depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for ~~such deposit.~~these deposits."

SECTION 13.(a) G.S. 163-278.39B is recodified as G.S. 163-278.38Z under Part 1A of Article 22A of Chapter 163 of the General Statutes, so that the recodified section appears as the first section in Part 1A.

SECTION 13.(b) G.S. 163-278.6 reads as rewritten:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of 'radio' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

...

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received

funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of 'candidate' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of 'print media,' 'radio,' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

...

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;
b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;
c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or
d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the

presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of 'political action committee' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of 'political party organization' that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

..."

SECTION 14.(a) Section 1 of S.L. 2001-37 is repealed.

SECTION 14.(b) S.L. 2001-37 is amended by adding a new section to read:

"SECTION 1.1. G.S. 160A 58.1(b)(5) does not apply to the Cities of Marion, Oxford, and Rockingham and the Towns of Calabash, Catawba, Dallas, Godwin, Louisburg, Mocksville, Pembroke, Rutherfordton, and Waynesville."

SECTION 14.(c) G.S. 160-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Hickory, Marion, Mount Airy, New Bern, Newton, Oxford, Rockingham, Sanford, Salisbury, Southport, and Statesville, and the Towns of Calabash, Catawba, Dallas, Godwin, Kenly, Louisburg, Maiden, Midland, Mocksville, Mooresville, Pembroke, Rutherfordton, Swansboro, ~~and Warsaw.~~ Warsaw, and Waynesville."

SECTION 14.(d) G.S. 160A-58.1(b1) is repealed.

SECTION 15. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

J-1 Committee — 7-12-04
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCAEC
	DICIC
Angie Harris	Maupin Taylor
Ken Melton	DOR
Stephanie Simpson	NC Assn. of Realtors
Mark Fleming	University System
Gary Thompson	GSK
Lillie Ecchini	NAR
Kevin Leonard	WCSR
Frankie Jones	Govt affairs
Robin Smith	DENR
Allen Wood	DPH-DHHS
Johanna Reese	DENR
Carl Goodwin	DSP
Joe Dunsdale	SHP
Arnett Taylor	SHP
Mike Mansum	DOA-P&C
Karen Peters	CGRS
Andrea Payne	Edmisten & Webb
M. Lewis	BIC
J. Dorsett	JD, AL, PA
	NMRS
Bill Rustin	Rep
Pam Deardorff	Retirement
Sandy Sands	WCSR

VISITOR REGISTRATION SHEET

J-1 Committee — 7-12-04
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	EAL
Chad Essick	Edmister & Webb
Kathy Hawkins	Progress Energy
Michael Hoover	NCAE
Sean Pierce	Duke Energy
Michelle Hazier	NC Bar Ass'n
Mark Spencer	
Susan Harrison	WCBJ
Katherine Joyce	NCASA
Dirk Tay	FCATL
Paul Fulk	NCATL
Elizabeth Dalton	Food Assoc.
	NS
Steve Keene	NCMS
Worth	
AG Horne	NCMS
Pete A. Young	ACLU/APPCIVC/FELTC
Hugh Tilson	NCHA
Steve Eaton	Hunton + Williams LLP
John Bourdeaux	ADA
	NCDOC
BILL HALE	ACLI
Cam Cova	BPMHL
Greg McLeod	NC AGO
John McMillan	NFOS
Jan Mobley	Economics
Mary K Hackney	Intern - Rep. Hackney
Tracy Kimbrell	Pfizer Poc

VISITOR REGISTRATION SHEET

J-1 Committee — 7-12-04
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flannery	NCLICFA
Barbara Carrella	BSCGR
Jane Royall	NC Family Policy Council
Lee COGGIN	KCLH
Estherine Davis	Local Cities
Kathryn Hunter	St. Bd. Education
Billy Hall	Annual Statutes Commission
Rob Lucas	NCDHHS
R. Reed Colbert	NCCHBA
[illegible]	[illegible]
[illegible]	NCCLI
[illegible]	NC DOC
Mildred Spearman	NCDOC
Jim Blackburn	County Commissioners Association
Andy Ramerst	NCLM
URIAH KING	SELF-HELP
Soren Schmidt	NC Justice Center
Rob Schofield	"
[illegible]	[illegible]
Bill Wilson	NCACTA
Frank W. Fogleman	NC DOI
Betty Turner	NCNB
[illegible]	[illegible]
DAVID M. BARNES	Poyner + Spruill LLP
[illegible]	[illegible]
Colleen Kachmarek	Hafer + Caldwell, P.A.
[illegible]	NCRA
Andy Ellen	NCRMA

2003-2004 Standing Committees

Box Contents

Box	
11	2003-2004 Senate Judiciary II
	2003-2004 Senate Pensions & Retirement & Aging
	2003 Senate Redistricting, Extra Session
	2003-2004 Senate Rules
	2003-2004 Senate State Government, Local Government & Veterans Affairs
	2003-2004 Senate Transportation